

NO. LLI CV 15 6013033S	:	SUPERIOR COURT
	:	
LIME ROCK PARK, LLC	:	
	:	JUDICIAL DISTRICT
v.	:	OF LITCHFIELD
	:	
PLANNING AND ZONING COMMISSION	:	
OF THE TOWN OF SALISBURY, ET AL.	:	OCTOBER 19, 2016

**APPENDIX TO APPEAL BRIEF OF INTERVENING
DEFENDANT LIME ROCK CITIZENS COUNCIL, LLC**

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 Council, LLC

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221.1 Track for Racing Motor Vehicles

A track for racing MOTOR VEHICLES, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the following:

a. No motor vehicle races shall be conducted on any such track except in accordance with the following parameters¹:

- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows:
 - A. On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - B. Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows:
 - A. On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - B. On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - C. On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.
 - D. In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.
 - E. On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - (i) In the event any of said holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited.

¹ The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vail, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield).

- (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
- (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmuffled activity beyond ten (10) as provided in Paragraph b) above.
- (4) Prohibited activity upon the track property shall include the revving or testing of muffled or unmuffled car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
- (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
- (6) A "racing car" is defined as any car entered in an event on an asphalt track.
- (7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.

b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this amendment to the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.

c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.

d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.

e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.

f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the

premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.

221.2 Permitted uses incidental to and accessory to the operation of the track for racing motor vehicles include: retail stores, professional or business offices, fire or emergency services, ATMs, restaurants, and food stands. Incidental accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.

221.3 Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions²:

a. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1, 1979;

b. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are 1) on official track business; and 2) parked in the parking lot area adjacent to the track office, as it now exists;

c. The back road and Race Track entrance, which runs past that property now known as the Williams' property³, shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.

221.4 The following uses are deemed not accessory or incidental to the track for racing motor vehicles but are allowed subject to a special permit: Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.

² These restrictions are identical to those set forth in the stipulated judgment of the Court, O'Neill, J., dated September 19, 1979 in Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury, No. 16,4046 (Judicial District of Litchfield).

³ Assessor's Map No. 04, Lot 07; 52 White Hollow Road.

(23) "Median divider" means an intervening space or physical barrier or clearly indicated dividing section separating traffic lanes provided for vehicles proceeding in opposite directions.

(24) "Motor bus" includes any public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation by indiscriminately receiving or discharging passengers, or running on a regular route or over any portion thereof or between fixed termini.

(25) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle or seat on which the rider sits or a platform on which he stands, and with or without a side car, except any vehicle in which the driver's seat is completely or partially enclosed and the motor on such vehicle is not within such enclosed area, and shall include bicycles having a motor attached, except bicycles propelled by means of a helper motor as defined in section 14-286.

(26) "Motor vehicle" means any vehicle which is propelled or drawn by any power other than muscular, except aircraft, motor boats, road rollers, baggage trucks used about railroad stations or other mass transit facilities, electric battery-operated wheel chairs when operated by physically handicapped persons at speeds not exceeding fifteen miles per hour, golf carts operated on highways solely for the purpose of crossing from one part of the golf course to another, agricultural tractors, farm implements, such vehicles as run only upon rails or tracks, self-propelled snow plows, snow blowers and lawn mowers, when used for the purposes for which they were designed and operated at speeds not exceeding four miles per hour, whether or not the operator rides on or walks behind such equipment, bicycles with helper motors as defined in section 14-286 and any other vehicle not suitable for operation on a highway.

(27) "Motor vehicle registration" or "registration" includes the certificate thereof and the number plate or plates used in connection therewith.

(28) "Nonresident" means any person whose legal residence is in some state other than Connecticut or in a foreign country.

(29) "Nonskid device" means any device applied to the tires, wheels, axles or frame of a motor vehicle for the purpose of increasing the traction thereof.

(30) "Number plate" means any sign or marker furnished by the commissioner on which is displayed the registration number assigned to such motor vehicle by said commissioner.

(31) "Officer" includes any constable, sheriff, deputy sheriff, inspector of motor vehicles, state policeman or other official authorized to make arrests or to serve process, provided he shall be in uniform or display his badge of office in a conspicuous place when making an arrest.

(32) "Operator" or "driver" means any person who operates a motor

Skilled nursing, assisted living, convalescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
205.2 TABLE OF USES- Rural Enterprise; Commercial & Industrial Zones page 3						
	RE	C-20	CG-20	LI-1		
Cemetery	Special Permit	Special Permit	Special Permit	Special Permit		
Commercial golf course	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Outdoor commercial uses: skating rink, ski area, golf driving range, tennis court, beach, swimming and picnic areas	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Golf course, outdoor tennis club or riding club sponsored by non-profit organization	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Indoor tennis, racquetball or squash facility	Site Plan	Site Plan	Site Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	Site Plan	Not Permitted		
Musical theater, Instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plan	Not Permitted		
Track for Racing Motor Vehicles	Special Permit	Not Permitted	Not Permitted	Not Permitted		

205.3 TABLE OF ACCESSORY USES

THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS

Farming, gardening, raising of crops or fruit and keeping of farm animals	No Permit Required
Renting of room and board	Zoning Permit
Home office of convenience	No Permit Required
Apartment on Single Family Residential Lot	See Section 208
Keeping horses (max.3)	Zoning Permit
Fence over 8 feet height	Zoning Permit
Family day care home	Zoning Permit
Temporary special events	No Permit or Special Permit
Excavation and grading	Special Permit with exceptions as stated under Section on Excavation and Grading Art.VI
Signs	See Section on Signs
Accessory buildings and structures	Zoning Permit or Site Plan
Dock	Zoning Permit
Construction site trailer	Temporary Use Zoning Permit
Single commercial vehicle max. 200 sq.ft footprint	No Permit Required
More than one commercial vehicle and/or commercial equipment storage	Zoning Permit
Wireless telecommunication antennae	Site Plan
Outdoor Woodburning Furnace	See Section 208

Activities incidental/accessory to Lime Rock Park, see Section 221

Exhibit 1

LIME ROCK CITIZENS COUNCIL
Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

Exhibit 10-1

LIME ROCK CITIZENS COUNCIL (formerly known as the "Lime Rock Protection Association")
c/o Peter S. Wolf
45 White Hollow Rd.
Lakeville, CT 06039

RECEIVED

AUG 26 2015

CLERK'S OFFICE-SALISBURY
CT

August 26, 2015

By Registered Mail:

Mr. Brandon Pelegano, Chief Clerk of Court
Clerk's Office, Litchfield County Superior Court
15 West Street
Litchfield, CT 06759

With copies to:

By Email:

Ms. Georgia Blades
Lime Rock Park
60 White Hollow Rd.
Lakeville, CT 06039

By Hand Delivery:

Dr. Michael Klemens, Chairman
Salisbury Planning and Zoning Commission
Town Hall
Salisbury, CT 06068

Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

Dear Mr. Pelegano,

Please be advised that a group of residents and concerned neighbors of Lime Rock have organized to form the LIME ROCK CITIZENS COUNCIL, LLP ("LRCC") with the purpose of promoting and protecting the interests of those adversely affected by the activities of Lime Rock Park, a motorsport road racing venue located in Lime Rock, Connecticut (the "Track"). The LRCC is a limited liability corporation established under the laws of the State of Connecticut (Business ID 1181805).

It recently has come to the attention of the LRCC that the Track intends to seek amendments to an Order and Injunction entered by the Superior Court of Litchfield County in 1959 (amended by stipulation in 1966 and 1988), in *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459* (the "Injunction"). This Injunction imposes significant restrictions on the Track's activities, which in

LIME ROCK CITIZENS COUNCIL

Re: *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*

turn protect the rights and interests of those home owners, business owners, residents, and concerned citizens represented by the LRCC. The LRCC understands, on information and belief, that the entity that most recently represented the interests of Lime Rock's residents and neighbors in this court action, the "Lime Rock Protection Association, Inc." is no longer in existence. The LRCC therefore has formed to ensure that those interests are properly represented and vigorously protected.

Accordingly, the LRCC respectfully requests that the Clerk of Court provide notice to the LRCC of any activity on this docket (*Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*, a copy of which is attached hereto) or any action filed by or on behalf of the Lime Rock Park seeking to amend or challenge the provisions of the Injunction (as amended). Notice may be provided to the LRCC's legal agent, Peter Wolf of 45 White Hollow Road, Lakeville, CT 06039, (860-435-9411), and by email to: limerockcitizenscouncil@gmail.com.

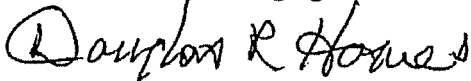
Please also be advised that should the Track decide to take any legal or administrative action to modify the terms of the 1959 Injunction (as amended), the LRCC fully intends to oppose any such action.

Sincerely,

Peter S. Wolf, Managing co-Founder



Douglas R. Howes, Managing co-Founder



On behalf of the LIME ROCK CITIZENS COUNCIL

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AUG 28 2015

PZC OFFICE-SALISBURY
CT

Exhibit 2

Exhibit 10-2

Nicholas Gordon, President
Music Mountain Inc.
Music Mountain Road, Falls Village, Connecticut
Mailing Address: PO Box 738, Lakeville, CT 06039
860-824-7626
ngordon@keystonebroadcasting.com

September 1, 2015

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SEP 04 2015

PZC OFFICE-SALISBURY
CT

Mr. Michael Klemens – Chairman
Salisbury Planning and Zoning Commission
Town Hall
P.O. Box 548
27 Main Street
Salisbury, Connecticut 06068

Mr. Curtis Rand- First Selectman
Board of Selectmen, Town of Salisbury
Town Hall
P.O. Box 548
27 Main Street
Salisbury, Connecticut 06068

RE: LIME ROCK TRACK

Dear Mr. Klemens and Mr. Rand,

I am writing this letter on behalf of the officers and directors, the board and corporation, the patrons, students and listeners (both live and broadcast) of Music Mountain. We are aware that the owners of Lime Rock Park are attempting to change the current Court order pertaining to Lime Rock Park to include, among other activities, racing on Sundays. As a result, the Board of Trustees of Music Mountain has been charged with the obligation to strongly oppose any such change.

Over 85 years ago, (long before the race track at Lime Rock Park), Music Mountain was founded by Jacques Gordon. It is a non-profit, educational organization committed to bringing chamber and other forms of music to all people. Our primary mission is to encourage music education through performance. We house student performers all summer, we host world renowned musicians each week, and we broadcast live concerts nationally and worldwide over radio stations in all parts of the United States and our own YouTube channel. Throughout the years, our concerts coupled with our wonderful concert hall, continue to be applauded by critics from the New York Times, the New Yorker magazine and much more. In fact, in a recent issue of the New Yorker magazine, Music Mountain was described as "the cherished chamber-music venue". There is no question that Music Mountain promotes our region and bring listeners, artists, students, and tourists to our area, totaling about 8-10,000 each summer. .

We are able to realize the accolades of critics, the contribution of the finest performers, the educational reputation of the most serious students and the continued patronage of devoted listeners because they all take the greatest pleasure from performances surrounded by the beauty and serenity of Music

Mountain. Indeed, Gordon Hall contains the finest acoustics and the highest quality recording equipment, which will pick up the slightest sound, in order to carry the very essence of our music to listeners.

Make no mistake, any change in the racing schedule would devastate the equilibrium of our relationship with Lime Rock Park and impact Music Mountain forever. Indeed, any such change will inevitably devastate the very mission we have pursued with considerable success for the past 86 years, and end our ability to broadcast, which we have now down for 41 years.

We appreciate the folks that enjoy the track and understand the business objective of making higher profits, but this cannot be at the risk of destroying other worthy organizations. We intend to send a letter to our listeners and supporters to implore them to help us address this grave situation. After 86 years of bringing chamber music and other performances to our area, we cannot sit idly by and watch another organization figuratively drive Music Mountain into the ground.

The direct and significant impact that any change to the current Court order will have on Music Mountain unquestionably makes this organization an interested party to any change in the status quo. Therefore I trust that henceforth Music Mountain will be joined as a necessary party to any discussion, meetings, correspondence, Court action, etc. in order that we be given the opportunity to show the direct and consequential damages that will result therefrom.



For the board of Managers and the members of the Music Mountain Corporation
Nicholas Gordon, president
Music Mountain, Inc.

CC;
Janet Manko, The Lakeville Journal
Doug Clement, The Litchfield County Times
Ruth Epstein, The Republican-American

RECEIVED

SEP 04 2015

PZC OFFICE-SALISBURY
CT

Exhibit 10-17

RECEIVED

NO. 15,149 : SUPERIOR COURT
ANN ADAMS, ET AL. : J.D. OF LITCHFIELD
V. : AT LITCHFIELD
B. FRANKLIN VAILL, ET AL. : September 4, 2015

SEP 08 2015
F20 OFFICE-SALISBURY
CT

Exh. b. +
17

**MOTION FOR ORDER OF NOTICE BY PUBLICATION
AND TO SET HEARING DATE**

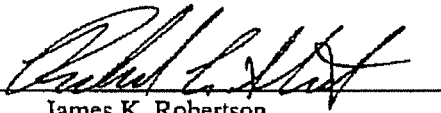
The defendant, Lime Rock Park, LLC ("Lime Rock") hereby moves for an order of notice setting a hearing date on its Motion to Modify Injunction and permitting Lime Rock to give notice of the hearing by newspaper publication. As previously described in its Motion to Modify filed with this Court, Lime Rock seeks to modify an injunction that it entered into by stipulation in 1988 because of the change in circumstances in the intervening twenty-seven years. The original action was filed against Lime Rock in 1959, and many of the plaintiffs are apparently deceased, or no longer living in the area and cannot be located. After searching, Lime Rock has not been able to locate any of the parties with the exception of the Trinity Episcopal Church and the Lime Rock Cemetery Association, both of whom Lime Rock proposes to serve notice by civil process. In 1988, the only party plaintiff that entered into the stipulation to modify the injunction with Lime Rock was the "Lime Rock Protection Committee, Inc." According to the records from the Connecticut Secretary of State, that entity was forfeited in 1990. Lastly, a person named Peter Wolf, the statutory agent for a newly formed entity called "Lime Rock Citizens Council, LLP" has recently informed the Court by letter that he would like to be informed of any Motion to Modify the injunction. (Mr. Wolf's letter is attached to this Motion as Exhibit A.) Lime Rock proposes to serve the Motion to Modify and Order of Notice upon Mr. Wolf at the address that he provided in his letter to the Court.

(N5116708)

STATE OF CONNECTICUT
JUDICIAL DISTRICT OF
LITCHFIELD
2015 SEP 4 PM 4 48
SUPERIOR COURT
OFFICE OF THE CLERK

WHEREFORE, Lime Rock respectfully requests that the court set a date for a hearing on its Motion to Modify and to permit it to give notice of the hearing by civil process served upon Trinity Episcopal Church, The Lime Rock Cemetery Association and Peter Wolf, and further by publication as set forth in the attached proposed Order of Notice.

LIME ROCK PARK, LLC

By 

James K. Robertson

Richard L. Street

For: Carmody Torrance Sandak
& Hennessey LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721-1110
Telephone: 203-573-1200
Juris No. 08512
Its Attorneys

(NS116708)

NO. 15,149 : SUPERIOR COURT
ANN ADAMS, ET AL. : J.D. OF LITCHFIELD
V. : AT LITCHFIELD
B. FRANKLIN VAILL, ET AL. :

ORDER OF NOTICE

Upon consideration of the foregoing Motion for Order of Notice and the Motion to Modify Injunction in the above-entitled matter, setting forth that defendant seeks to modify the Stipulated Injunction entered into by this Court on January 14, 1988, it is hereby

ORDERED, that a hearing on the foregoing Motion to Modify Injunction be held before the Superior Court, Judicial District of Litchfield, 15 West Street, Litchfield, Connecticut 06759 in ³⁴⁴~~Courtroom~~ Room on the 26 day of OCTOBER, 2015 at 9:30 a.m.; and it is further

ORDERED, that notice of the pendency of said Motion to Modify Injunction and the time and place of such hearing be given to the Trinity Episcopal Church, The Lime Rock Cemetery Improvement Association and Peter Wolf, Agent for Service of the "Lime Rock Citizens Council" by some proper officer making service upon, in the manner provided for service of process in civil actions of a true and attested copy of said Motion and of this Order at least ten (10) days prior to said date; and that return of such service be made to the above-named court at or before the time fixed for said hearing.

Notice of the Motion and the date and time of the Hearing shall also be published by the attached Legal Notice in the Lakeville Journal for two consecutive weeks and the Waterbury Republican-American on two consecutive Tuesdays and Saturdays.

{N5116708}

Dated at Litchfield, Connecticut, this 4 day of SEPTEMBER, 2015

DANAWER, J.

Mark Slane

Judge/Clerk

Deputy Chief Clerk

{N5116708}

LEGAL NOTICE

NOTICE OF MOTION TO MODIFY INJUNCTION
AND STIPULATION BY LIME ROCK PARK, LLC

By order of the Superior Court for the Judicial District of Litchfield at Litchfield, notice is hereby given that Lime Rock Park, LLC has filed a Motion to Modify Stipulation and Injunction in Ann Adams, et al. v. B. Franklin Vaill et al. Docket No. 15,549.

The Motion to Modify seeks to modify the terms of a permanent injunction entered into concerning Lime Rock Park in Salisbury, Connecticut. The injunction was first entered into by judgment in 1959 and was subsequently modified by the Superior Court in 1966, 1969 and 1988. The Plaintiffs to the action are: Ann Adams, Annie W. Fenker, Herbert Oscar Bergdahl, Earl W. Hubbard, Edgar Fry, Joseph W. Mallach, Agatha Mallach, Ralph McLellan, Florence McLellan, Jack Olsen, Annie M. Olsen, Grace Bergdahl, Herbert O. Bergdahl, Jr., Amy Fry, Edith Stone, Irma Varady, Elizabeth Hetherington, Lillian H. Roberts, Moritz Wallach, Walter Verrier, Ida Belle Thomas, Benjamin S. Arnstein, Grace Dunbar, all of Salisbury, Connecticut, Eleanor Lake of Sharon, Connecticut, Mary Lambert of Canaan, Connecticut, Helen Heffner of Suffern, New York, The Lime Rock Cemetery Improvement Association, Trinity Episcopal Church of Lime Rock and The Lime Rock Protection Committee, Inc. The defendant seeking to modify the injunction is Lime Rock Park, LLC.

Any persons who may claim to be a party to such action may appear and be heard at a hearing to be held at the Superior Court for the Judicial District of Litchfield at Litchfield, 15 West Street, Litchfield, Connecticut 06759 on October 26, 2005 at 9:30 a.m. The purpose of said hearing will be to consider and act upon Lime Rock Park LLC's Motion to Modify Stipulation and Injunction. The Motion is on file at the clerk's office for the Superior Court for the Judicial District of Litchfield at Litchfield under Docket Number 15, 149.

LIME ROCK PARK, LLC

By _____

LIME ROCK CITIZENS COUNCIL
Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

LIME ROCK CITIZENS COUNCIL (formerly known as the "Lime Rock Protection Association")
c/o Peter S. Wolf
45 White Hollow Rd.
Lakeville, CT 06039

August 26, 2015

By Registered Mail:

Mr. Brandon Pelegano, Chief Clerk of Court
Clerk's Office, Litchfield County Superior Court
15 West Street
Litchfield, CT 06759

With copies to:

By Email:

Ms. Georgia Blades
Lime Rock Park
60 White Hollow Rd.
Lakeville, CT 06039

By Hand Delivery:

Dr. Michael Klemens, Chairman
Salisbury Planning and Zoning Commission
Town Hall
Salisbury, CT 06068

Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

Dear Mr. Pelegano,

Please be advised that a group of residents and concerned neighbors of Lime Rock have organized to form the LIME ROCK CITIZENS COUNCIL, LLP ("LRCC") with the purpose of promoting and protecting the interests of those adversely affected by the activities of Lime Rock Park, a motorsport road racing venue located in Lime Rock, Connecticut (the "Track"). The LRCC is a limited liability corporation established under the laws of the State of Connecticut (Business ID 1181805).

It recently has come to the attention of the LRCC that the Track intends to seek amendments to an Order and Injunction entered by the Superior Court of Litchfield County in 1959 (amended by stipulation in 1966 and 1988), in *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459* (the "Injunction"). This Injunction imposes significant restrictions on the Track's activities, which in

LIME ROCK CITIZENS COUNCIL

Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

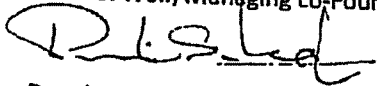
turn protect the rights and interests of those home owners, business owners, residents, and concerned citizens represented by the LRCC. The LRCC understands, on information and belief, that the entity that most recently represented the interests of Lime Rock's residents and neighbors in this court action, the "Lime Rock Protection Association, Inc." is no longer in existence. The LRCC therefore has formed to ensure that those interests are properly represented and vigorously protected.

Accordingly, the LRCC respectfully requests that the Clerk of Court provide notice to the LRCC of any activity on this docket (*Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*, a copy of which is attached hereto) or any action filed by or on behalf of the Lime Rock Park seeking to amend or challenge the provisions of the Injunction (as amended). Notice may be provided to the LRCC's legal agent, Peter Wolf of 45 White Hollow Road, Lakeville, CT 06039, (860-435-9411), and by email to: limerockcitizenscouncil@gmail.com.

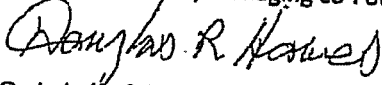
Please also be advised that should the Track decide to take any legal or administrative action to modify the terms of the 1959 Injunction (as amended), the LRCC fully intends to oppose any such action.

Sincerely,

Peter S. Wolf, Managing co-Founder



Douglas R. Howes, Managing co-Founder



On behalf of the LIME ROCK CITIZENS COUNCIL

OFFICE OF THE CLERK
SUPERIOR COURT
SEP 04 2015
JUDICIAL DISTRICT
OF LITCHFIELD

NO. 15,149 : SUPERIOR COURT
ANN ADAMS, ET AL. : J.D. OF LITCHFIELD
V. : AT LITCHFIELD
B. FRANKLIN VAILL, ET AL. : September 4, 2015

MOTION TO MODIFY INJUNCTION AND JUDGMENT

LIME ROCK PARK, LLC ("Lime Rock") respectfully represents that:

1. The defendant, Lime Rock is the operator of a race track in Salisbury, Connecticut known as Lime Rock Park.
2. Since the mid-1950's Lime Rock Park has held motor vehicle races and other activities such as hosting driving schools, car club events, automotive manufacturer testing, photo and publicity shoots, and other related activities at Lime Rock Park.
3. Since it began operation in 1957, Lime Rock Park has enjoyed a reputation as a premier racing facility, and it has always sought to host races and events at Lime Rock Park that allow it to operate as a leading motor vehicle racing facility in the northeast.
4. In 1959, a group of neighbors brought this action against Lime Rock's predecessor, alleging that excessive noise from the racing operations caused a nuisance to neighboring properties. Judgment entered for the plaintiffs and a permanent injunction was put in place restricting certain types of racing and related activities at certain times. Sunday racing was entirely prohibited.
5. The injunction has been modified several times over the years as circumstances and the parties have changed. The injunction was most recently modified in 1988 by stipulation of the plaintiff "Lime Rock Protection Committee, Inc." and Lime Rock's immediate

{N5117346}

predecessor in interest, Lime Rock Associates, Inc. (The original injunction and subsequent modifications are attached as **Exhibit A.**)

6. Lime Rock Protection Committee Inc. was forfeited by the Connecticut Secretary of State in 1990. Despite the forfeiture of the party that entered into the stipulated injunction, Lime Rock has complied with the terms of the 1988 stipulated injunction to the present. The Trinity Episcopal Church and The Lime Rock Cemetery Improvement Association are still in existence, but, upon information and belief, the whereabouts of the other original parties to this action cannot be ascertained at the present time.

7. Since the time of the 1988 stipulated injunction the racing industry has changed significantly. Racing events that were once amateur events have become professional. The evolution of the racing industry, and the requirements of sanctioning bodies and media have resulted in far fewer major racing events each year, but they are much larger and more complex than previously. The length of each event has grown from two-day events with one day of racing to three- or four- day events, which must include practice, qualifying, and a main race and supporting races. Tracks like Lime Rock must now pay professional sanctioning bodies for the privilege of hosting a race weekend and the number of such major weekends available as a practical matter has been reduced to very few. As a result, the two-day events with one day of racing that used to be held at Lime Rock and similar tracks are no longer economically viable and far less common as the racing industry has changed. Under the terms of the present injunction, Lime Rock can only host such unmuffled racing events on Fridays and Saturdays, (i.e. the event cannot include a Thursday or Sunday), which is not enough time to conduct the type of professional racing event that the sanctioning bodies now require.

8. Sunday is the usual day nationwide for conducting the feature race of an event; Lime Rock is the only motor vehicle racing track in the entire country that is prohibited from holding unmuffled races on Sunday. The current injunction that prohibits Sunday racing and activity of all kinds places Lime Rock at a severe competitive disadvantage in the race track industry and threatens Lime Rock's economic viability.

9. Under the current Injunction, Lime Rock can regularly conduct unmuffled events on Tuesday afternoons, but not on Thursdays or Sundays. Because major events require at least three or four days, and Sundays are currently prohibited, and for similar reasons with other events, Lime Rock seeks to be allowed to operate unmuffled activities on a very limited number of Thursdays instead of Tuesday afternoons that week. Modest extensions of Friday morning and Saturday afternoon operation times are also required. Lime Rock would also need to conduct unmuffled activities on two Sundays per year, one to act as a rainout date (which is a very rare occurrence) and one to host a major racing event. Under existing Connecticut law, no racing would be allowed before 12:00 p.m. on such Sundays.

10. With respect to muffled activities, pursuant to the instant Injunction, the non-major event muffled activities at Lime Rock Park are governed by Connecticut General Statutes § 14-80(c) as amended, which effectively applies to Lime Rock the same standards as apply to ordinary motor vehicles on public roads. Lime Rock does not here seek to alter such standard. However, Lime Rock does seek to permit muffled activities on some Sundays to allow the track to stay economically competitive. Also contained within the boundaries of Lime Rock Park are small paved exercise and testing areas known as the "Upper Area" upon which only muffled vehicles operate, except during an unmuffled event.

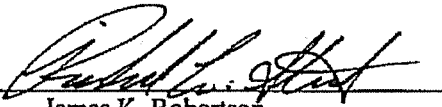
11. The changes in facts and circumstances of the racing industry and business make modifications to the present injunction necessary that will allow Lime Rock to remain economically viable as a leading motor vehicle race track.

12. Specifically, Lime Rock seeks to modify the present terms of the injunction by (1) allowing it to have one Sunday per year of unmuffled racing activity after 12:00 p.m., and one Sunday per year when it may conduct unmuffled racing in the event that there is a weather postponement on a prior day; and (2) allowing muffled racing activity for twenty (20) Sundays per year; and (3) allowing a start time of 9:00 a.m. for muffled activity in the Upper Area on Sunday and at 12:00 p.m. on the asphalt race track, with all racing activity concluding by 6:00 p.m. on Sundays; and (3) changing the start time on Friday morning from 10:00 a.m. to 9:00 a.m. and on Saturday, changing the finish time from 6:00 p.m. to 7:00p.m.; and (4) allowing races on unmuffled Fridays in addition to the presently allowed unmuffled performance testing, qualifying and race preparation; and (5) reducing the number of Tuesdays that Lime Rock can conduct unmuffled racing activity from fifty-two (52) per year to twenty (20) per year, but allowing Lime Rock to conduct unmuffled activity, including racing, on five Thursdays per year from 9:00 a.m. to 6:00 p.m. instead of on the Tuesday of that week.

13. A proposed Order is attached hereto that specifically states the modifications to the injunction necessitated by the changes in the racing industry and the operations of the track.

Wherefore, the defendant, Lime Rock, moves that this Court schedule a hearing to allow Lime Rock to present evidence as to the facts, circumstances and equitable reasons that its Motion should be granted.

LIME ROCK PARK, LLC

By 

James K. Robertson
Richard L. Street

For: Carmody Torrance Sandak
& Hennessey LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721-1110
Telephone: 203-573-1200
Juris No. 08512
Its Attorneys

NO. 15,149 : SUPERIOR COURT
ANN ADAMS, ET AL. : J.D. OF LITCHFIELD
V. : AT LITCHFIELD
B. FRANKLIN VAILL, ET AL. :

PROPOSED ORDER

After a hearing held on the foregoing Motion, it is found that fairness and equity require that the Judgment and Injunction dated January 14, 1988 be modified as follows:

1. Once per year, Lime Rock Park may conduct unmuffled racing activity at the track on a Sunday. Additionally, once per year, Lime Rock Park may move a scheduled Saturday unmuffled race to a Sunday if weather conditions cause a postponement of a race scheduled for a prior day. Any Sunday unmuffled racing activity shall only be between 12:00 p.m. and 6 p.m. and loading may extend until 7:00 p.m.
2. During the ten Friday and Saturday weekend events that are allowed under Paragraphs III. b) and c) of the current injunction, unmuffled racing activity may be held at Lime Rock Park, Friday 9 a.m. to 7 p.m., and Saturday 9 a.m. to 7 p.m. Qualifying heats or races shall be permitted on Fridays. During these ten Friday and Saturday events, loading may extend until 8:00pm and the track loudspeakers may be utilized until 8 p.m.
3. Lime Rock may only have unmuffled racing car activity on twenty (20) Tuesdays per year between 12 p.m. and 6 p.m. instead of the fifty-two (52) Tuesdays allowed under the present injunction. However, on five (5) Thursdays per year, Lime Rock may have unmuffled racing car activity at the track between 9 a.m. and 6 p.m., including qualifying heats or races, but it shall not conduct unmuffled activity on Tuesday if it will utilize a Thursday that week.

Qualifying heats or races shall be permitted on the ten Fridays and unmuffled activity shall be allowed to begin at 9am on those ten Fridays.

4. On twenty Sundays per year, Lime Rock shall be allowed to conduct muffled activity on the "Upper Area" between 9 a.m. and 6 p.m. and on the asphalt track between 12 noon and 6 p.m.

Judge/Clerk

STATE OF CONNECTICUT

ANN ADAMS, ANNIE W. FENKER, HERBERT OSCAR BERGDAHL, EARL W. HUBBARD, EDGAR FRY, JOSEPH W. MALLACH, AGATHA MALLACH, RALPH McLELLAN, FLORENCE McLELLAN, JACK OLSEN, ANNIE M. OLSEN, GRACE BERGDAHL, HERBERT O. BERGDAHL, JR., AMY FRY, EDITH STONE, IRMA VARADY, ELIZABETH HETHERINGTON, LILLIAN H. ROBERTS, MORITZ WALLACH, WALTER VERRIER, IDA BELLE THOMAS, BENJAMIN S. ARNSTEIN and GRACE DUNBAR, all of the Town of Salisbury, County of Litchfield and State of Connecticut, ELEANOR LAKE, of the Town of Sharon, County of Litchfield and State of Connecticut, MARY LAMBERT, of the Town of Canaan, in said County and State, HELEN HEFFNER, of Suffern, County of Rockland and State of New York, THE LIME ROCK CEMETERY IMPROVEMENT ASSOCIATION, a voluntary cemetery association organized and existing under the laws of the State of Connecticut and located in Lime Rock, in said Town of Salisbury, and TRINITY EPISCOPAL CHURCH OF LIME ROCK, a parish of the Protestant Episcopal Church in Connecticut, located in Lime Rock in said Town of Salisbury,

SUPERIOR COURT

VS.

LITCHFIELD COUNTY

B. FRANKLIN VAILL, of said Town of Salisbury, and THE LIME ROCK CORPORATION, a Connecticut corporation having its office and principal place of business in said Town of Salisbury,

MAY 12, 1959 ✓

Present: Hon. William J. Shea, Judge

This action, by writ and complaint, dated August 20, 1958, claiming a permanent injunction abating an alleged nuisance and such other and further relief as to equity might belong, came to this court on the first Tuesday of September, 1958, and thence to September 9, 1958 when by stipulation of the parties said writ and complaint were amended and Trinity Episcopal Church of Lime Rock was added as a party plaintiff, and thence to the present time, when the parties appeared and were at issue to the court as on file.

The court, having heard the parties, finds the issues for the plaintiffs and that the use of the defendants' hard surface race track for sport car racing should be subject to the following limitations:

I. All activity upon the track shall be prohibited on Sundays.

II. Muffled activity shall be permitted as follows:

- (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
- (B) Permissible mufflers are those which meet the standards set forth in Section 14-80 (c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.

III. Activity with unmuffled engines may be permitted as follows:

- (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
- (B) On Saturdays, not more than ten (10) in number in each calendar year between the hours of 9:00 a.m. and 6:00 p.m.
- (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified.
- (D) In the event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in paragraphs (B) and (C) above.
- (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - (1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.
 - (2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.

- (3) In no event shall any such holiday increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in paragraph (B) above.

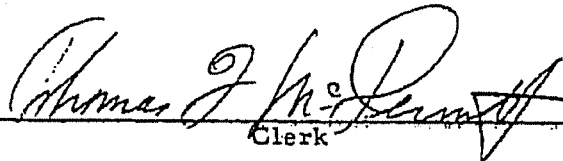
Whereupon it is adjudged that the defendants, and their servants and agents, be and they hereby are enjoined, each under a penalty of ten thousand dollars, against any further use of said race track for any purpose at any time in violation of the following limitations and restrictions:

- I. All activity upon the track shall be prohibited on Sundays.
- II. Muffled activity shall be permitted as follows:
 - (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
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 - (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified.
 - (D) In the event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in paragraphs (B) and (C) above.
 - (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.

- (1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.
- (2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
- (3) In no event shall any such holiday increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in paragraph (B) above.

and that the plaintiffs recover of the defendants their costs, taxed at \$181.85.

By the Court,


Clerk

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No. 15,459

ANN ADAMS ET AL

vs.

B. FRANKLIN VAILL ET AL

SUPERIOR COURT

LITCHFIELD COUNTY

MARCH 2, 1966

STIPULATION

The plaintiffs and the defendants in the above entitled action hereby stipulate and request that the judgment and injunctive order of May 12, 1959 be amended to read as follows:

The defendants and their servants and agents are hereby enjoined, each under a penalty of ten thousand dollars, against any further use of the sports car race track property at Lime Rock for any purpose at any time in violation of the following limitations and restrictions:

- I. All activity of muffled or unmuffled racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- II. Activity with muffled racing car engines shall be permitted as follows:
 - (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - (B) Permissible mufflers are those which meet the standards set forth in Section 14-80 (c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- III. Activity with unmuffled racing car engines shall be permitted as follows:
 - (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - (B) On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.

(D) In the event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs (B) and (C) above.

(E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.

(1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.

(2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.

(3) In no event shall any such holidays increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in Paragraph (B) above.

IV. Prohibited activity upon the track property shall include the revving or testing of muffled or unmuffled racing car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas or on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.

V. The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.

VI. A "racing car" is defined as any car entered in an event on the asphalt track.

~ PLAINTIFFS

- By Robert R. Roberg & Thomas J. Roberg
Their Attorneys

~ DEFENDANTS

By William L. Smith & Thomas J. Roberg
Their Attorneys

No. 15,459

STATE OF CONNECTICUT

SUPERIOR COURT

ANN ADAMS, ANNIE W. FENKER, HERBERT
OSCAR BERGDAHL, EARL W. HUBBARD, EDGAR
FRY, JOSEPH W. MALLACH, AGATHA MALLACH,
RALPH McLELLAN, FLORENCE McLELLAN,
JACK OLSEN, ANNIE M. OLSEN, GRACE
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AMY FRY, EDITH STONE, IRMA VARADY,
ELIZABETH HETHERINGTON, LILLIAN H.
ROBERTS, MORITZ WALLACH, WALTER
VERRIER, IDA BELLE THOMAS, BENJAMIN S.
ARNSTEIN and GRACE DUNBAR, all of the
Town of Salisbury, County of Litchfield
and State of Connecticut, ELEANOR LAKE,
of the Town of Sharon, County of Litchfield
and State of Connecticut, MARY LAMBERT, of
the Town of Canaan, in said County and
State, HELEN HEFFNER, of Suffern, County of
Rockland and State of New York, THE LIME
ROCK CEMETERY IMPROVEMENT ASSOCIATION, a
voluntary cemetery association organized
and existing under the laws of the State
of Connecticut and located in Lime Rock, in
said Town of Salisbury, and TRINITY
EPISCOPAL CHURCH OF LIME ROCK, a parish of
the Protestant Episcopal Church in Connecti-
cut, located in Lime Rock in said Town of
Salisbury,

VS.

LITCHFIELD COUNTY

B. FRANKLIN VAILL, of said Town of Salisbury,
and THE LIME ROCK CORPORATION, a Connecticut
corporation having its office and principal
place of business in said Town of Salisbury,

AUGUST 26, 1968

Present: Hon. Robert A. Wall, Judge

This action, by writ and complaint, dated August 20, 1958, claiming a permanent injunction abating an alleged nuisance and such other and further relief as to equity might belong, came to this court on the first Tuesday of September, 1958, and thence to September 9, 1958 when by stipulation of the parties said writ and complaint were amended and Trinity Episcopal Church of Lime Rock was added as a party plaintiff, and thence to the present time, when the parties appeared and were at issues to the court as on file.

The court, having heard the parties, finds the issues for the plaintiffs and that the use of the defendants' hard surface race track for sport car racing should be the subject to the following limitations:

- I. All activity upon the track shall be prohibited on Sundays.
- II. Muffled activity shall be permitted as follows:
 - (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - (B) Permissible mufflers are those which meet the standards set forth in Section 14-80 (c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- III. Activity with unmuffled engines may be permitted as follows:
 - (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - (B) On Saturdays, not more than ten (10) in number in each calendar year between the hours of 9:00 a.m. and 6:00 p.m.
 - (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified.
 - (D) In the event the scheduled activity for any of the said ten (10) Saturdays must be re-scheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in paragraphs (B) and (C) above.
 - (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - (1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.
 - (2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.

- (3) In no event shall any such holiday increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in paragraph (B) above.

Whereupon it is adjudged that the defendants, and their servants and agents, be and they hereby are enjoined, each under a penalty of ten thousand dollars, against any further use of said race track for any purpose at any time in violation of the following limitations and restrictions:

- I. All activity upon the track shall be prohibited on Sundays.
- II. Muffled activity shall be permitted as follows:
 - (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
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 - (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified.
 - (D) In the event the scheduled activity for any of the said ten (10) Saturdays must be re-scheduled for a "rain date" then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in paragraphs (B) and (C) above.
 - (E) On Memorial Day, Fourth of July, and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.

- (1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.
- (2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
- (3) In no event shall any such holiday increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in paragraph (B) above.

And thence to March 2, 1966 when the plaintiffs and the defendants appeared through counsel and stipulated that the judgment and injunctive order of May 12, 1959 be amended as follows:

The defendants and their servants and agents are hereby enjoined, each under a penalty of ten thousand dollars, against any further use of the sports car race track property at Lime Rock for any purpose at any time in violation of the following limitations and restrictions:

- I. All activity of muffled or unmuffled racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- II. Activity with muffled racing car engines shall be permitted as follows:
 - (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - (B) Permissible mufflers are those which meet the standards set forth in Section 14-80 (c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- III. Activity with unmuffled racing car engines shall be permitted as follows:
 - (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - (B) On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.

(C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified; provided that no qualifying heats or races shall be permitted on such Fridays.

(D) In the event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs (B) and (C) above.

(E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.

(1) In the event any of said holidays falls on a Tuesday, Thursday, or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in that event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.

(2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.

(3) In no event shall any such holidays increase the number of Saturdays of permissible unmuffled activity beyond ten as provided in Paragraph (B) above.

IV. Prohibited activity upon the track property shall include the revving or testing of muffled or unmuffled racing car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas or on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.

V. The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.

VI. A "racing car" is defined as any car entered in an event on the asphalt track.

And thence by continuance to the 26th day of July, 1968 when the plaintiffs filed a motion for Modification of the Judgment and Injunctive Order entered by the Court on May 12, 1958 as amended by a stipulation entered into by the parties on March 2, 1966 and thence to the present time when the parties

appeared and were at issue to the Court as on file.

The Court having heard the parties finds the issues for the plaintiffs.

Whereupon it is adjudged that the Judgment and Injunctive Order of March 2, 1966 be modified to prohibit the operation and use of unmuffled motor vehicles on the Lime Rock Race Track and the defendants cease and desist immediately from sponsoring the racing of said unmuffled vehicles.

Wool

JUDGE

Connecticut
District
Litchfield

23.

I, DAVID C. BRISTOL, Chief Clerk of the Judicial District of Litchfield and of the Superior Court of said State within and for said Judicial District, which is a Court of Record, and Keeper of the Seal thereof, DO HEREBY CERTIFY that the within and foregoing is a true copy of JUDGMENT dated August 26, 1968 in file #01.54.59.....
Ann. Adams, et. al vs. B. Franklin Vail, et. al.....

In Testimony Whereof I have hereunto set my hand and the Seal of said Superior Court at Litchfield, in said Judicial District, this 29th day of August 19 86.

David C. Bristol

Clerk.

Assistant Clerk.

Howd. Lavieri & Finch

434 Prospect Street • Post Office Box 839 • Torrington, Connecticut 06790-0839
Phone (203) 496-0889 • Juris No. 101150

OFFICE OF THE CLERK
SUPERIOR COURT

NO. 15,459 : SUPERIOR COURT
ANN ADAMS, ET AL : JUDICIAL DISTRICT OF LITCHFIELD
VS. : AT LITCHFIELD
B. FRANKLIN VAILL, ET AL : JANUARY 14, 1988

S T I P U L A T I O N

WHEREAS, the court entered a judgment and injunctive order dated May 12, 1959, which order was amended on March 2, 1966 and on August 26, 1968 and

WHEREAS, the plaintiff, Lime Rock Protection Committee, Inc. and the defendant, Lime Rock Associates, Inc., desire to make certain changes in the judgment and injunctive order including adding a restriction against motorcycle racing, and modifying the injunction due to the 1969 change in language of Connecticut General Statute Sec. 14-80(c); and

WHEREAS, notice to all other parties has been provided by mail to all counsel of record;

NOW THEREFORE, the plaintiff, Lime Rock Protection Committee, Inc., and the defendant, Lime Rock Associates, Inc., hereby stipulate and request that the judgment and injunctive order dated 1959 and amended March 2, 1966 and on August 26, 1968 be to read as follows:

MAR 8 9 26 AM '88
JUDICIAL DISTRICT
LITCHFIELD
STATE OF CONNECTICUT

101

- I. All activity of muffled or unmuffled racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- II. Activity with muffled racing car engines shall be permitted as follows:
 - a) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - b) Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- III. Activity with unmuffled racing car engines shall be permitted as follows:
 - a) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - b) On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - c) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.
 - d) In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.
 - e) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - 1) In the event any of said holidays falls on a Tuesday, Thursday or a Friday, there may be

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434 Prospect Street • Post Office Box 839 • Torrington, Connecticut 06790-0839
Phone (203) 496-0889 • Juris No. 101150

unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.

- 2) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
 - 3) In no event shall any such holidays increase the number of Saturdays of permissible unmuffled activity beyond ten (10) as provided in Paragraph b) above.
- IV. Prohibited activity upon the track property shall include the revving or testing of muffled or unmuffled car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
- V. The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
- VI. A "racing car" is defined as any car entered in an event on an asphalt track.
- VII. Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.

LIME ROCK PROTECTION COMMITTEE, INC.

by Joan C. Bergdahl, Pres.

LIME ROCK ASSOCIATES, INC.

by [Signature] Pres.

Howd. Lavieri & Finch
434 Prospect Street • Post Office Box 839 • Torrington, Connecticut 06790-0839
Phone (203) 496-0889 • Judge NO. 1150
OFFICE OF THE CLERK
SUPERIOR COURT

NO. 15,459

ANN ADAMS, ET AL

SUPERIOR COURT

VS.

JUDICIAL DISTRICT OF LITCHFIELD AT LITCHFIELD

B. FRANKLIN VAILL, ET AL

MARCH 3, 1988

MOTION TO AMEND JUDGMENT

The defendant, Lime Rock Associates, Inc., moves that the judgment in this matter be amended in accordance with the Stipulation annexed hereto.

DEFENDANT, LIME ROCK ASSOCIATES, INC.:

BY

John W. Pickard
John W. Pickard

ORDER MARCH 21, 1988

The foregoing motion having been duly presented and heard, it is hereby

ORDERED: GRANTED/~~DENIED~~.

BY THE COURT: (DRAVONIS, J.)

Richard T. Fawell
Asst. Clerk

JANO NOICE SENT
3/21/88 CML

I hereby certify that a copy of the foregoing has been mailed to counsel of record this 3rd day of March, 1988.

John W. Pickard
John W. Pickard

March 8, 1988
#2500 pd.
Receipt #003935
M. Cleveland

NO. 16,416 D

STATE OF CONNECTICUT

LIME ROCK PROTECTION COMMITTEE, INC. • SUPERIOR COURT
of Salisbury, Connecticut

HERBERT O. BERGDAHL
of Salisbury, Connecticut

JOAN C. BERGDAHL
of Salisbury, Connecticut

VS.

JUDICIAL DISTRICT OF LITCHFIELD

LIME ROCK FOUNDATION, INC.
of Salisbury, Connecticut

ZONING BOARD OF APPEALS OF THE
TOWN OF SALISBURY
of Salisbury, Connecticut

SEPTEMBER 19, 1979

PRESENT: Honorable Norris L. O'Neill, Judge.

J U D G M E N T

This action, in the nature of an appeal from a decision of the Zoning Board of Appeals of the Town of Salisbury came to this Court on December 13, 1977 and thence to later dates when the parties appeared and were at issue as on file, and thence to the present time when the motion of the plaintiff, Jack Olson, to withdraw as a plaintiff was granted.

The Court, having considered the Stipulation for Judgment signed by all parties entered the following judgment:

Judgment may enter modifying the decision of the Zoning Board of Appeals of the Town of Salisbury in the following respects:

175 WATER STREET • TORRINGTON, CONNECTICUT 06790 • P.O. BOX 1146 • (203) 482-7651 • JURIS NO. 59583
COURT REPORTERS AT LAW

The nonconforming use of the premises known as Lime Rock Park (hereinafter called the "Race Track") is hereby construed to permit camping by an unlimited number of spectators and participants as an accessory use to permissible automobile racing events subject to the following restrictions:

- a. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1, 1979;
- b. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are
a) on official track business and b) parked in the parking lot area adjacent to the track office, as it now exists;
- c. The back road and Race Track entrance, which runs past that property now known as the Williams' property, shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.

The terms of this judgment shall take effect on July 1, 1979.

State of Connecticut
Judicial District
of Litchfield

ss.

I, DAVID C. BRISTOL, Chief Clerk of the Judicial District of Litchfield and of the Superior Court of said State within and for said Judicial District which is a Court of Record, and Keeper of the Seal thereof, DO HEREBY CERTIFY that the within and foregoing is a true copy of JUDGMENT - NO. 16,416 Lime Rock Protection Committee, Inc. et al

VS

Lime Rock Foundation, Inc., et al.

In Testimony Whereof I have hereunto set my hand and the Seal of said Superior Court at Litchfield, in said Judicial District, this 23rd day of October, 1979.

.....  Chief Clerk.

.....  Assistant Clerk

JD-CSP

RECEIVED
SEP 08 2015
FOR OFFICE SALISBURY
CT

Exhibit
18

Exhibit 10-18

NO. 16,404 6 : SUPERIOR COURT
LIME ROCK FOUNDATION, INC. : J.D. OF LITCHFIELD
V. : AT LITCHFIELD
ZONING BOARD OF APPEALS OF :
THE TOWN OF SALISBURY

NO. 16,416 D : SUPERIOR COURT
LIME ROCK PROTECTION : J.D. OF LITCHFIELD
COMMITTEE : AT LITCHFIELD
V. :
LIME ROCK FOUNDATION, INC., :
ET AL.

NO. 16,920 D : SUPERIOR COURT
LIME ROCK PROTECTION : J.D. OF LITCHFIELD
COMMITTEE : AT LITCHFIELD
V. :
LIME ROCK FOUNDATION, INC., :
ET AL. : SEPTEMBER 4, 2015

OFFICE OF THE CLERK
SUPERIOR COURT
2015 SEP 4 PM 4 48
JUDICIAL DISTRICT OF
LITCHFIELD
STATE OF CONNECTICUT

**MOTION FOR ORDER OF NOTICE BY PUBLICATION
AND TO SET HEARING DATE**

Lime Rock Park, LLC ("Lime Rock") hereby moves for an order of notice setting a hearing date on its Motion to Modify Judgment and permitting Lime Rock to give notice of the hearing by newspaper publication. As described in its Motion to Modify filed with this Court, Lime Rock seeks to modify an injunction limiting camping at Lime Rock Park that it entered into by stipulation in 1979 because of the significant change in circumstances in the intervening

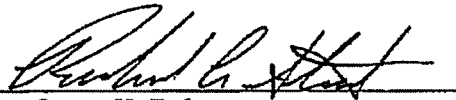
thirty-six years. The original actions were filed in the late 1970's and they involved three consolidated cases: (a) one involving the Salisbury Zoning Board of Appeals, (b) two involving The Lime Rock Protection Committee, Inc. and Herbert O. Bergdahl and Joan C. Bergdahl.

After searching, Lime Rock has not been able to locate any of the parties with the exception of the Zoning Board of Appeals, whom Lime Rock proposes to serve notice by civil process. The plaintiff "Lime Rock Protection Committee, Inc." does not appear to be an entity that is still in existence. According to the records from the Connecticut Secretary of State, that entity was forfeited in 1990. Probate records indicate that Herbert O. Bergdahl passed away in 1989. Lastly, a person named Peter Wolf, the statutory agent for a newly formed entity called "Lime Rock Citizens Council, LLP" has recently informed the Court by letter that he would like to be informed of any Motion to Modify and injunction involving Lime Rock Park. (Mr. Wolf's letter is attached to this Motion as Exhibit A.) Lime Rock proposes to serve the Motion to Modify and Order of Notice upon Mr. Wolf at the address that he provided in his letter to the Court.

WHEREFORE, Lime Rock respectfully requests that the court set a date for a hearing on its Motion to Modify and to permit it to give notice of the hearing by civil process served upon The Zoning Board of Appeals and Peter Wolf, and further by publication as set forth in the attached proposed Order of Notice.

LIME ROCK PARK, LLC

By



James K. Robertson
Richard L. Street

For: Carmody Torrance Sandak
& Hennessey LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721-1110
Telephone: 203-573-1200
Juris No. 08512
Its Attorneys

LEGAL NOTICE

**NOTICE OF MOTION TO MODIFY INJUNCTION
AND STIPULATION BY LIME ROCK PARK, LLC**

By order of the Superior Court for the Judicial District of Litchfield at Litchfield, notice is hereby given that Lime Rock Park, LLC has filed a Motion to Modify Stipulation and Judgment in Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury, Docket No. 16, 404 6 and Lime Rock Protection Committee v. Lime Rock Foundation Inc., Docket No. 16,416 D.

The Motion to Modify seeks to modify the terms of a permanent injunction entered into concerning Lime Rock Park in Salisbury, Connecticut. The injunction was entered into by judgment in 1979. The Parties to the action are: Zoning Board of Appeals of the Town of Salisbury, Herbert O. Bergdahl, Joan C. Bergdahl and The Lime Rock Protection Committee, Inc. The defendant seeking to modify the injunction is Lime Rock Park, LLC.

Any persons who may claim to be a party to such action may appear and be heard at a hearing to be held at the Superior Court for the Judicial District of Litchfield at Litchfield, 15 West Street, Litchfield, Connecticut 06759 on October 26, 2016 at 9:30 a.m. The purpose of said hearing will be to consider and act upon Lime Rock Park LLC's Motion to Modify Stipulation and Judgment. The Motion is on file at the clerk's office for the Superior Court for the Judicial District of Litchfield at Litchfield under Docket Number 16, 404 6.

LIME ROCK PARK, LLC

By _____

LIME ROCK CITIZENS COUNCIL
Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

LIME ROCK CITIZENS COUNCIL (formerly known as the "Lime Rock Protection Association")
c/o Peter S. Wolf
45 White Hollow Rd.
Lakeville, CT 06039

August 26, 2015

By Registered Mail:

Mr. Brandon Pelegano, Chief Clerk of Court
Clerk's Office, Litchfield County Superior Court
15 West Street
Litchfield, CT 06759

With copies to:

By Email:

Ms. Georgia Blades
Lime Rock Park
60 White Hollow Rd.
Lakeville, CT 06039

By Hand Delivery:

Dr. Michael Klemens, Chairman
Salisbury Planning and Zoning Commission
Town Hall
Salisbury, CT 06068

Re: *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*

Dear Mr. Pelegano,

Please be advised that a group of residents and concerned neighbors of Lime Rock have organized to form the **LIME ROCK CITIZENS COUNCIL, LLP ("LRCC")** with the purpose of promoting and protecting the interests of those adversely affected by the activities of Lime Rock Park, a motorsport road racing venue located in Lime Rock, Connecticut (the "Track"). The LRCC is a limited liability corporation established under the laws of the State of Connecticut (Business ID 1181805).

It recently has come to the attention of the LRCC that the Track intends to seek amendments to an Order and Injunction entered by the Superior Court of Litchfield County in 1959 (amended by stipulation in 1966 and 1988), in *Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459* (the "Injunction"). This Injunction imposes significant restrictions on the Track's activities, which in

LIME ROCK CITIZENS COUNCIL

Re: Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459

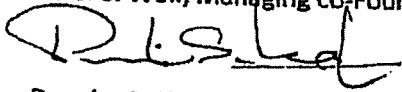
turn protect the rights and interests of those home owners, business owners, residents, and concerned citizens represented by the LRCC. The LRCC understands, on information and belief, that the entity that most recently represented the interests of Lime Rock's residents and neighbors in this court action, the "Lime Rock Protection Association, Inc." is no longer in existence. The LRCC therefore has formed to ensure that those interests are properly represented and vigorously protected.

Accordingly, the LRCC respectfully requests that the Clerk of Court provide notice to the LRCC of any activity on this docket (*Ann Adams, et al., v. B. Franklin Vaill, et al., No. 15,459*, a copy of which is attached hereto) or any action filed by or on behalf of the Lime Rock Park seeking to amend or challenge the provisions of the Injunction (as amended). Notice may be provided to the LRCC's legal agent, Peter Wolf of 45 White Hollow Road, Lakeville, CT 06039, (860-435-9411), and by email to: limerockcitizenscouncil@gmail.com.

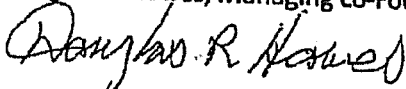
Please also be advised that should the Track decide to take any legal or administrative action to modify the terms of the 1959 Injunction (as amended), the LRCC fully intends to oppose any such action.

Sincerely,

Peter S. Wolf, Managing co-Founder



Douglas R. Howes, Managing co-Founder



On behalf of the LIME ROCK CITIZENS COUNCIL

NO. 16,404 6	:	SUPERIOR COURT
LIME ROCK FOUNDATION, INC.	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
ZONING BOARD OF APPEALS OF THE TOWN OF SALISBURY	:	

NO. 16,416 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	

NO. 16,920 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	

ORDER OF NOTICE

Upon consideration of the foregoing Motion for Order of Notice and the Motion to Modify Injunction in the above-entitled matter, setting forth that the defendant seeks to modify the Stipulated Injunction entered into by this Court on September 19, 1979, it is hereby

ORDERED, that a hearing on the foregoing Motion to Modify Stipulation and Judgment be held before the Superior Court, Judicial District of Litchfield, 15 West Street, Litchfield, Connecticut 06759 in ~~Courtroom~~ JURY ROOM on the 26 day of OCTOBER, 2015 at 9:30 a.m.; and it is further

ORDERED, that notice of the pendency of said Motion to Modify Stipulation and Judgment and the time and place of such hearing be given to the Town of Salisbury Zoning Board of Appeals and Peter Wolf, Agent for Service of the "Lime Rock Citizens Council" by some proper officer making service upon, in the manner provided for service of process in civil actions of a true and attested copy of said Motion and of this Order at least ten (10) days prior to said date; and that return of such service be made to the above-named court at or before the time fixed for said hearing.

Notice of the Motion and the date and time of the Hearing shall also be published by the attached Legal Notice in the Lakeville Journal for two consecutive weeks and the Waterbury Republican-American on two consecutive Tuesdays and Saturdays.

Dated at Litchfield, Connecticut, this 4 day of SEPTEMBER, 2015

DAWNEN, J

Mark Shee

Judge/Clerk

Deputy Chief Clerk

NO. 16,404 6	:	SUPERIOR COURT
LIME ROCK FOUNDATION, INC.	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
ZONING BOARD OF APPEALS OF THE TOWN OF SALISBURY	:	

NO. 16,416 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
	:	AT LITCHFIELD
V.	:	
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	

NO. 16,920 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
	:	AT LITCHFIELD
V.	:	
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	SEPTEMBER 4, 2015

MOTION TO MODIFY STIPULATION AND JUDGMENT

LIME ROCK PARK, LLC ("Lime Rock") respectfully represents that:

1. The defendant, Lime Rock is the operator of a race track in Salisbury, Connecticut known as Lime Rock Park.
2. Since the mid-1950's, Lime Rock Park has held motor vehicle races and other activities such as hosting driving schools, car club events, automotive manufacturer testing,

photo and publicity shoots, and other related activities such as overnight camping at Lime Rock Park.

3. Since it began operation in the 1950's, Lime Rock Park has enjoyed a reputation as a premier racing facility, and it has always sought to host races and events at Lime Rock Park that allow it to operate as a leading motor vehicle racing facility in the Northeast. These races included a long tradition of camping at Lime Rock Park by spectators and race teams, often necessitated by the lack of adequate hotel or temporary living quarters in the area.

4. In 1979, there were a number of appeals related to camping at Lime Rock Park that involved private parties and the Town of Salisbury Zoning Board of Appeals. The appeals were eventually resolved with a stipulation and judgment that recognized the right of Lime Rock to have overnight camping, but limited camping to the so called infield area and prohibited camping and parking in the outfield area. The judgment also closed camping traffic on one of the main track entrances between 11 p.m. and 6 a.m. (A copy of the stipulation and judgment is attached as Exhibit A.)

5. Since the time of the 1979 stipulation and judgment, the racing business has changed significantly. Racing events that were once amateur events have become professional, with tracks like Lime Rock now paying professional sanctioning bodies for the privilege of hosting a race weekend. These racing events are now typically three or four day events instead of two day events. Lime Rock has separately filed a Motion to Modify Injunction that will allow it to remain economically viable and host these types of racing events.

6. Concurrently, the nature of camping by spectators at Lime Rock Park has changed significantly in kind and manner. Prior to 1979, campers often camped in tents or small campers while in more modern times many campers now desire to camp in large recreational vehicles and trailers with modern amenities. These large recreational vehicles utilize far more space than tents or older style campers and Lime Rock is often not able to accommodate the fans and spectators who want to camp in the infield area where camping is presently allowed.

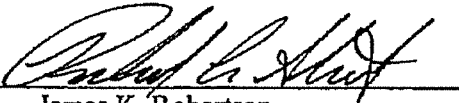
7. The changes in facts and circumstances of the racing industry and business, including the nature of the change to camping vehicles, make modifications to the present judgment necessary that will allow Lime Rock to remain economically viable as a leading motor vehicle race track.

8. Specifically, Lime Rock seeks to modify the present terms of the injunction by allowing the following additional camping activities in addition to those already authorized: (1) allowing camping in the outfield area in connection with racing events at Lime Rock from 6 p.m. prior to the night of the race event to noon the day following the race event; (2) allowing overnight parking in the outfield area in connection with racing events at Lime Rock from 6 p.m. the night prior to the race event to noon the day following the race event; (3) allowing overnight camping traffic on the road and race track entrance between 11:00 p.m. and 6:00 a.m. on those nights when outfield camping is allowed.

9. A proposed Order is attached hereto that specifically states the modifications to the injunction necessitated by the changes in the racing and camping industry and the operations of the track.

WHEREFORE, the defendant, Lime Rock, moves that this Court schedule a hearing to allow Lime Rock to present evidence as to the facts, circumstances and equitable reasons that its Motion should be granted.

LIME ROCK PARK, LLC

By 

James K. Robertson

Richard L. Street

For: Carmody Torrance Sandak
& Hennessey LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721-1110
Telephone: 203-573-1200
Juris No. 08512
Its Attorneys

NO. 16,404 6	:	SUPERIOR COURT
LIME ROCK FOUNDATION, INC.	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
ZONING BOARD OF APPEALS OF THE TOWN OF SALISBURY	:	

NO. 16,416 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	

NO. 16,920 D	:	SUPERIOR COURT
LIME ROCK PROTECTION COMMITTEE	:	J.D. OF LITCHFIELD
V.	:	AT LITCHFIELD
	:	
LIME ROCK FOUNDATION, INC., ET AL.	:	

PROPOSED ORDER

After a hearing held on the foregoing Motion, it is found that fairness and equity require that the Judgment dated September 19, 1979 be modified to allow the following additional activities:

1. Camping and camping vehicles shall be allowed in the race track outfield from 6 p.m. the night prior to the beginning of a race event at Lime Rock to noon the day following the race event.

2. Overnight parking shall be allowed in the race track outfield from 6pm the night prior to the beginning of a race event at Lime Rock to noon the day following the race event.

3. On any night that outfield camping is allowed, camping traffic shall be allowed between 11:00 p.m. and 6:00 a.m. on the road and race track entrance that runs past the property formerly owned by Reed Williams.

Judge/Clerk

STATE OF CONNECTICUT

No. 16,404 6

LIME ROCK FOUNDATION, INC.
of Salisbury, Connecticut

SUPERIOR COURT

vs.

JUDICIAL DISTRICT OF LITCHFIELD

ZONING BOARD OF APPEALS OF THE
TOWN OF SALISBURY
of Salisbury, Connecticut

September 19, 1979

PRESENT: Honorable Norris L. O'Neill, Judge.

JUDGMENT

This action, in the nature of an appeal from a decision of the Zoning Board of Appeals of the Town of Salisbury came to this Court on December 6, 1977, and thence to later dates when the parties appeared and were at issue as on file, and thence to the present time.

The Court, having considered the Stipulation for Judgment signed by all parties enters the following judgment:

Judgment may enter modifying the decision of the Zoning Board of Appeals of the Town of Salisbury in the following respects:

The nonconforming use of the premises known as Lime Rock Park (hereinafter called the "Race Track") is hereby construed to permit camping by an unlimited number of spectators and participants as an accessory use to permissible automobile racing events subject to the following restriction:

- a. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1, 1979;

CLARENCE J. WATSON, JR. AT LAW
170 WATER STREET • TORRINGTON, CONNECTICUT 06861
790 • P.O. BOX 1145 • (203) 482-7651 • JURIS NO. 58583

COUNSELORS AT LAW
TORRINGTON, CONNECTICUT 06790 - P.O. BOX 11146 - (203) 542-7651 - JURIS NO. 59583

b. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are a) on official track business and b) parked in the parking lot area adjacent to the track office, as it now exists;

c. The back road and Race Track entrance, which runs past that property now known as the Williams' property, shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.

The terms of this judgment shall take effect on July 1, 1979.

This judgment is entered without costs or interest to any party.

s/ N. O'Neill

Judge

State of Connecticut
Judicial District
of Litchfield

ss.

I, DAVID C. BRISTOL, Chief Clerk of the Judicial District of Litchfield and of the Superior Court of said State within and for said Judicial District which is a Court of Record, and Keeper of the Seal thereof, DO HEREBY CERTIFY that the within and foregoing is a true copy of JUDGMENT - NO. 16,404 Lime Rock Foundation, Inc.

VS

Zoning Board of Appeals of the Town of Salisbury

In Testimony Whereof I have hereunto set my hand and the Seal of said Superior Court at Litchfield, in said Judicial District, this 23rd day of October, 1979.

Chief Clerk.

JD-CSP

XXXXXX

x

178 WATER STREET • TORRINGTON, CONNECTICUT 06793 • P.O. BOX 1146 • (203) 482-7651 • JURIS NO. 59583
COUNSELOR AT LAW

NO. 16,404 6
LIME ROCK FOUNDATION, INC.

VS.

ZONING BOARD OF APPEALS OF THE
TOWN OF SALISBURY

SUPERIOR COURT
JUDICIAL DISTRICT OF LITCHFIELD

MAY 31, 1979

NO. 16,416 D
LIME ROCK PROTECTION COMMITTEE

VS.

LIME ROCK FOUNDATION, INC., ET AL

SUPERIOR COURT
JUDICIAL DISTRICT OF LITCHFIELD

NO. 16,920 D
LIME ROCK PROTECTION COMMITTEE

VS.

LIME ROCK FOUNDATION, INC., ET AL

SUPERIOR COURT
JUDICIAL DISTRICT OF LITCHFIELD

STIPULATION FOR JUDGMENT

The parties to these actions hereby stipulate and agree that judgment may enter in Docket Number 16, 404 6 and Docket Number 16, 416 as follows:

The Lime Rock Foundation, Inc. shall be permitted to use the Lime Rock Park (hereinafter referred to as the race track) for camping by an unlimited number of spectators and participants at any events held at the park, subject to the following restrictions:

1. All camping and camping vehicles shall be limited to the race

SMITH, SMITH, KEE & PICKARD
COUNSELORS AT LAW

179 WATER STREET • TORRINGTON, CONNECTICUT 06790 • P.O. BOX 1146 • (203) 482-7651 • JURIS NO. 59563

track infield, as defined as the interior of the current 1.53 mile asphalt track, as it existed on May 1, 1979. The race track infield is defined as the area inside the track surface.

2. No motor vehicles with the exception of those involved in official track business, are to be parked in the race track outfield except during the hours of 6:00 a.m. and 10:00 p.m. Official track business shall not include campers and spectators.

3. The road and rack track entrance which presently runs past the property now owned by Reed Williams is to be closed between the hours of 11:00 p.m. and 6:00 a.m. to all camping traffic.

The terms of the judgments entered in accordance with this Stipulation shall take effect on July 1, 1979.

The parties further stipulate and agree that the appeal of Lime Rock Protection Committee, Inc., Docket Number 16,920 D is to be dismissed by the court "with prejudice".

All parties in all three appeals hereby waive any rights they have under the bonds filed in the cases.

The judgments in all three cases shall be without costs or interest to any party.

LIME ROCK PROTECTION COMMITTEE, HERBERT
O. BERGDAHL and JOAN C. BERGDAHL:

BY

James T. Graham for
Updike, Kelly & Spellacy, P.C.

SMITH, SMITH, KEEFE & PICKARD
COUNSELORS AT LAW

179 WATER STREET • TORRINGTON, CONNECTICUT 06790 • P.O. BOX 1146 • (203) 482-7651 • JURIS NO. 59583

LIME ROCK FOUNDATION, INC.:

BY

John W. Pickard
John W. Pickard for
Smith, Smith, Keefe & Pickard

ZONING BOARD OF APPEALS OF THE TOWN OF
SALISBURY:

BY

James I. Lotstein for
Hoppin, Carey & Powell

jb

))

STATE OF CONNECTICUT

NO. 16,920 D

LIME ROCK PROTECTION COMMITTEE, INC.
of Salisbury, Connecticut;

SUPERIOR COURT

JOAN BERGDAHL
of Salisbury, Connecticut

VS.

JUDICIAL DISTRICT OF LITCHFIELD

LIME ROCK FOUNDATION, INC.
of Salisbury, Connecticut;

SALISBURY ZONING BOARD OF APPEALS
of Salisbury, Connecticut

SEPTEMBER 19, 1979

PRESENT: Honorable Norris L. O'Neill, Judge.

J U D G M E N T

This action, in the nature of an appeal from a decision of the Zoning Board of Appeals of the Town of Salisbury came to this Court on June 20, 1978 and thence to later dates when the parties appeared and were at issue as on file; and thence to the present time when the motion of the plaintiff, Jack Olson, to withdraw as a plaintiff was granted.

The Court, having considered the Stipulation for Judgment signed by all parties enters the following judgment:

The appeal is dismissed with prejudice.

s/ N. O'Neill

Judge

179 WATER STREET • TORRINGTON, CONNECTICUT 06860 • P.O. BOX 1146 • 12031 482-7651 • JURIS NO. 59583
COUNSEL AT LAW
JAMES E. WILKINSON, JEFFERSON WILKINSON

Commissioners of the Planning and Zoning Commission
Town Hall
Salisbury, CT 06068

July 19, 2015

Planning & Zoning Commissioners:

RECEIVED

SEP 08 2015

PZC OFFICE-SALISBURY
CT

Exh. 10-22A
22 A

As the neighbors and residents that are most affected by the Lime Rock Race Track, we are cognizant of the revenue the track generates for the Town and recognize that many people depend on its existence for their livelihoods. As a result of the Track's activities, we expect to experience some noise and traffic.

That being said, as members of the Lime Rock community and its surrounding neighbors, we do not expect, nor do we find acceptable, the Track's constant push to expand its permitted uses and its failure to adequately control the traffic congestion and danger created by drivers on White Hollow Road, Route 112, Route 7 and adjacent side roads, during and after races, and during the non-race Sunday activities.

New concerns arose for us during the P&Z meeting on June 15, 2015, when the Track's legal counsel argued that the Track should not be considered a race track, but should be viewed as an "amusement park." The basis for this purported change in status, according to the Track's counsel, is that all race tracks are considered to be amusement parks. Notably, the Track's counsel did not provide any legal or factual support for this sweeping statement, and for those of us who have lived in close proximity to the Track for years, it is quite obviously not an "amusement park." This bewildering statement—that the Track should be considered an "amusement park" as opposed to a race track—was asserted by the Track's counsel in the context of a broader discussion regarding accessory uses that the Track deems their right to pursue, including on Sunday, when racing is prohibited by an injunction entered by Litchfield County Superior Court over fifty years ago.

Even more concerning, and further evidence that the Track is determined to upset the status quo, is its intention to seek amendments to the Injunction. The Injunction provides significant and critical protections for the residents of Lime Rock; protections that we have relied on for years to ensure that we may enjoy some peaceful use of our property and our neighborhood. We recognize that the P&ZC does not have jurisdiction over the Injunction, but we believe it is nonetheless important that the P&ZC is aware of the Track's intentions, and that it play an active role in regulating the Track's activities.

It is our understanding after a very recent meeting with the Track's representative, Georgia Blades, and reviewing her proposed amendments to the Injunction (attached here), that the Track imminently intends to seek changes to the Injunction, specifically to allow some Sunday racing, to increase significantly the activity and racing involving unmuffled cars, and to extend the hours of activity including use of the loud speakers. Needless to say, this is immensely disturbing to those of us who live with the noise and traffic generated by the Track on a near-daily basis, and have relied on the protections of the Injunction since it was entered in 1959.

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

We appreciate the time and energy the members of the P&ZC have spent on issues surrounding the Track. As they discuss the topic of accessory uses and other issues, we would like to offer the following recommendations for their consideration:

- The track is designated as a race track and not an amusement park.
- Sunday events require a special permit from P&Z with responsible oversight in place, such as police stationed at the White Hollow entrance as well as the entrance from Route 112.
- Both entrances to the track are opened during all events to alleviate the traffic back up on state highways as well as White Hollow Road and other accessory roads.
- Racing is not to be allowed on Sundays—for any reason—charitable or otherwise.
- There should be no increase in the unamplified activity at the Track.

As concerned citizens and homeowners who are entitled to quiet enjoyment of our property, particularly the sanctity of quiet Sundays, we adamantly oppose any proposal that would expand the time permitted to the Track to conduct its races and accessory use activities. While we respect the Track's right to conduct its business, its constant attempts to increase revenues should not trump our rights as citizens and homeowners.

Sincerely,

Members of the LIME ROCK CITIZENS COUNCIL:

	Name	Address	Relationship to Lime Rock
1.	Mary E. Fellows	13 Forge Lane	Lakeville, CT
2.	John D. Kul	15 White Hollow Rd	Lakeville, CT
3.	Sarah H. Hedy	45 White Hollow Rd.	Lakeville, CT
4.	Carol Fierro	45 White Hollow Rd.	Lakeville, CT
5.	Jim Burns	500 Lime Rock Road	
6.	Albin Webb	39 Furnace Rd.	Lakeville, CT
7.	Andy Pyle	24 FURNACE RD	LIME ROCK
8.	Mary C. Bush	21 Frye Ln.	Lakeville, CT
9.	Priscilla Wolf	45 White Hollow	Limerock, CT
10.	Rozie Vander Bogart	465 Lime Rock Rd	Limerock, CT
11.	Q. M. M.	418 LIME ROCK RD	LAKEVILLE CT

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
12. <u>Unit One</u>	470 Lime Rock Rd	Lakeville
13. <u>Adia Woods</u>	441 Lime Rock Rd	Lakeville
14. <u>James Lopes</u>	14 Forge Lane	Lakeville CT
15. <u>Carl Franson</u>	417 Lime Rock Rd.	Lakeville
16. <u>Diann Franson</u>	417 Lime Rock Rd.	Lakeville
17. <u>Andrea Salvestre</u>	500 Lime Rock Rd.	Lakeville
18. <u>Vitor Hermann</u>	37 Route 7, Salisbury	
19. <u>Eric Shepard</u>	37 Route 7, Salisbury	
20. <u>Peter Liebler</u>	45 White Hollow Rd.	Lakeville
21. <u>Douglas Hawes</u>	442 LIME ROCK RD	LAKEVILLE
22. <u>D. J. Silvermale</u>	442 Lime Rock Road	LAKEVILLE
23. <u>Julia Ghidessi</u>	437 Lime Rock Road	Lakeville
24. <u>John S.</u>	" " " "	" "
25. <u>Barbara Thibodeau</u>	160 White Hollow	Sharon.
26. <u>Leigh Ann Merrill</u>	517 Lime Rock Road	Lakeville
27. <u>Jeff R. Murrill</u>	517 Lime Rock Road	Lakeville
28. <u>Georgia Petrey</u>	549 Lime Rock Rd	Lakeville
	17 Cobble Rd.	Salisbury.
29. <u>Joan C. Bergdahl</u>	21 Furnace Rd.	Lakeville
30. <u>Laura H. Johnson</u>	"	"
31. <u>Earl Johnson</u>	"	"
32. <u>Mark Barry</u>	15 Petter St.	Lakeville




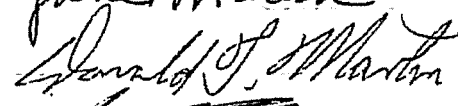
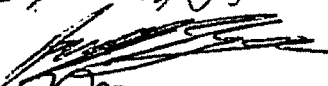

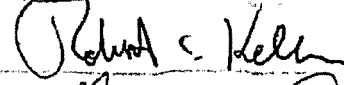
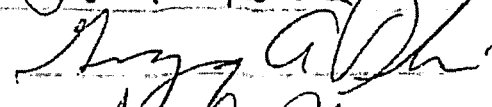
LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
33. Carollee Bell	442 LIME ROCK RD, LAKEVILLE CT	
34. Sue Collins	5 White Hollow Rd., Lakeville CT	
35. Chas. Hall	520 LIME ROCK RD LAKEVILLE CT	
36. Chas. Hall	520 Lime Rock Rd Lakeville CT	
37. Mary Landman	520 Lime Rock Rd Lakeville CT	
38. Nikolaus Markames	520 Lime Rock Rd Lakeville CT	
39. ROBERT PIRAMENT	428 LIME ROCK RD., LAKEVILLE, CT	
40. Michel Conlogue	423 Lime Rock Rd., Lakeville, CT	
41. Deana Hammond	423 Lime Rock Rd. Lakeville, CT	
42. Jacqueline Merwin	28 Dugway Rd Lime Rock, CT	
43. Kelley Merwin	28 Dugway Rd Lime Rock, CT	
44. RICHARD MERWIN	28 DUGWAY RD LIME ROCK, CT	
45. Pamela A. Riker	49 Dugway Rd. Lime Rock	
46. Robert V. Riker		
47. Michael Riker	49 Dugway Rd. Lime Rock	
48. Kim Riker	49 Dugway Rd. Lime Rock	
49. Kim Riker	67 Dugway Rd Lime Rock	
50. Betsy Sprague	126 Dugway Rd. Lakeville	
51. Robert Shields	432 Lime Rock Rd "	

LIME ROCK CHILDS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
51. John Smith	95 OUGWAY RD, SALISBURY, CT	
52. Mauden Spurrin	471 Lime Rock Rd Lakeville CT	
53. Andy Spurrin	471 Lime Rock Rd Lakeville CT	
54. H. Bydell #	527 Lime Rock rd. Salisbury Ct.	
55. Thomas A. Dehli	363 LIMEROCK Rd. Apt 1 Lakeville CT	
56. Rich Jettum	363 Limerock Apt 2 Lakeville CT	
57. Anthony Linberg	419 Salmon Kill Rd, Lakeville, CT	
58. Jerome H. Zier	30 BELL DRIVE, LAKEVILLE, CT.	
59. Virginia B. Delcine	407 Rt 7 N Falls Village CT	Trinity Church member
60. Patricia Kowaloki	422 Lime Rock Rd - Lakeville, CT	
61. Norma Wright	Trinity Church	
62. J J	444 Lime Rock Rd Lakeville CT	
63. Terri Chard	Box 607, Salisbury CT	
64. John Lewis	Box 1742 Lakeville CT	
65. John Whitmore	10 St. Johns Acres, Kent (work in Salisbury)	
66. M. Nowell	40 Countryview RD Milford (work in Salisbury)	
67. J. A. Nickerson	17 Cobble Rd, Salisbury CT	
68. Janette Hingston	" "	"
69. Barbara Hesse	" "	"
70. Janette Wein	" "	"
70A Fred Romeo	Lakeville CT	
70B Marion Romeo	Lakeville CT	

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
71. F. H. H. 	17 Cobble Rd.	Salisbury
72. Angela June-Wiggins	28 Petee St.	Lakeville
73. Sharon Schwartz	60 Weatogue Rd.	Salisbury
74. Lynn Kinkel	31 RR St.	Canaan
75. Judith McKernon	71 Lincoln City Rd	Lakeville
76. 	181 In. Hill	Lakeville
77. PE at office	17 Cobble Rd.	Salisbury CT
78. Peggy Bolmer	29 Unionville Rd.	Salisbury, CT
79. Anne Leeson	45 Library St	Salisbury CT
80. John T. Tunney	36 Petee St.	Lakeville
81. 	33 Fowler St	SALISBURY CT
82. Alex Harvey	451 Salmon Kill	LAKEVILLE, CT
83. Joanne Kueken	Salmon Kill	Lakeville CT.
84. Lynne Martin	34 Bragg St	Canaan Ct 0601
85. 	34 Bragg St	Canaan Ct 06018
86. 	150 FACTORY ST	SALISBURY CT. 060
87.  Richard Meissner	474 Limerock Rd	Lakeville Ct, 0603
88. 	418 Limerock Rd	Lakeville CT 0603
89. 	106 TRESMOTT HILL RD	CANAAN CT 0603
90. Sue A. Plaw	34 Bartow St	Canaan Ct. 06018

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
91. Sally Schelling	6 Carlson Rd. Canaan CT 06018	
92. Peter Paul	Carlson Rd. Canaan CT 06018	
93. Kirk Harrington	310 Music MTN RD, Falls Village, CT 06031	
94. Cynthia Walter	11 Upper Barrack Rd, Canaan, CT 06031	
95. Dale Malkames	520 Lime Rock Rd. Lakeville, CT 06039	
96. Marie Lavis	36 Lime Rock Sta. Falls Village, CT 06031	
97. Richard Lavis	18 Brewster Rd. Falls Village, CT 06031	
98. Robert Cushman	46 Lime Rock. Falls Village, CT 06031	
99. David Kowalski	265 RT 7 S Falls Village, CT 06031	
100. Bert Schmidt	16 Falls Mountain Rd. Falls Village, CT 06031	
101. Ceely Ackerman	16 Falls Mt. Rd. Falls Village, CT 06031	
102. Ed Hapstowski	62 Railroad Falls Village, CT 06031	
103. Mike John	480 Lime Rock Road Lakeville, CT 06039	
104. Connie Kelly	480 Lime Rock Rd Lakeville CT 06039	
105. Rachel B. Lamb	13 Rigdon, Salisbury CT 06068 (Trinity Church)	
106. Kathy M. Wolcott	38 Brass St. Canaan, CT 06018 (Trinity Church)	
107. R. Shepherd	14 Horseshoe Lane Lakeville, CT 06039 (Trinity Church)	
108. Jane Ellen Canfield	Trinity Church	
109. Jim Conzo	4 Mainville St #3 GB, MA	Trinity Church
110. Education	Trinity Church	

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
111 AA	484 Lime Rock Rd	Trinity Church Town
112 R. Oryon	SHARON, CT	VISITOR/ TRWT
113 Diane Walters	Millerton, N.Y.	Trinity Church Communion
114 Mary Anne Carley	Sharon, CT	Trinity Church
115 Beverly Becker	Canaan, CT	Trinity Church
116 Al H. H.	Falls Village, CT	Trinity Church
117 Christine Gwert	484 Lime Rock Rd., Lakeville	Trinity church
118 John Gledits	Trinity Church, Lime Rock	Trinity Church
119 Stephen R. Brown	Jalisco	"
120 David J. Vose	²⁹⁹ LIME ROCK RD	Resident
121 J.A. Curcetti	83 + 94 WHITE HOLLOW	RESIDENT BUS. OWNER
122 Sharon K. Kline	83 White Hollow Rd Sharon CT	
123 Allen Blagden	Race Track Rd, Salisbury CT 06068	
124 Ann B. Noble	107 Lime Rock Road	
125 Wendy Anderson	214 White Hollow Rd., Lakeville CT	
126 Hannah L. Browning	19 Sugar Hill Rd	Falls Village
127 Michael Curcio	446 Millerton Rd.	Trinity Church
128 Christine D. D.	Trinity Church Lime Rock	
129 Russell Dwyer	Trinity Church Lime Rock	
130 Jason Gledits	132 White Hollow Rd Lakeville	

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
131 Sam Brownings	Trinity Church	
132 Nancy Schaefer	Trinity Church	
133 Irene Nachtsabst	29 Brinton Hill Rd.	
134 Michael Nachtsabst	Lakeville 29 Brinton Hill Rd, Lakeville	
135 Sophie Caldwell	39 Brinton Hill Rd, Salisbury	
136 Andrew Kelly	39 Brinton Hill Rd, Salisbury	
137 Th. Robert	54 Brinton Hill Rd, Salisbury	
138 Karen Roberts	54 Brinton Hill Rd, Salisbury	
139 Star Brown	24 Housatonic Rte. Rd. Salisbury	
140 Ann Jordan	Pineer, N.S. & N. Salisbury, Ct	
141 Max Schaefer	38 Brinton Hill Road	
142 Janice Jones	38 Brinton Hill Road	
143 Phyllis McGhie	8 Bell Drive Lakeville	
144 Michael Peat	444 Hemlock Rd, Lakeville	
145 Diana Magnuson	11 Upland Meadow Rd. Lakeville	
146 Jano Faisseaux	97 Factory St Salisbury Ct	
147 Peggy Bolmer	29 Undermountain Rd, Salisbury, Ct	
148 Art Wattman	11 Indian Pt. Rd, Lakeville, Ct	
149 Robert Sheldon	432 Lime Rock Rd Lakeville Ct	
150 Angela Bruce Brent	323 Lime Rock Rd Lakeville Ct.	

LIME ROCK CITIZENS COUNCIL
Letter to the Planning & Zoning Commission

Name	Address	Relationship to Lime Rock
151 Arnold		
152 Barbara Macklin	70 Brunton Hill Rd. Falls Village	
153 Johanna Melle	452 Lime Rock Rd. Lakeville, CT	
154 Ruth Mulcahy	244 Route 7 South, Falls Village, CT	above High School
155 Jacqueline Kuhn	31 Sugar Hill Rd, Falls Village CT	
156 Tom Tom	307 Lime Rock Road LAKEVILLE CT 06039	
157 Beth Conn	474 Lime Rock Rd, Lakeville, CT 06039	
158 Paul Heissner	474 Lime Rock Rd, Lakeville, CT 06039	
159 Julie Deibel	407 Salmon Kill Rd Lakeville CT 06039	
160 Jeff Hamlin	407 Salmon Kill Rd., Lakeville CT 06039	
161 Andy Cullis	2 FURNACE RD, LAKEVILLE, CT 06039	
162 Carson D. Culleton	2 Furnace Rd., Lakeville, CT 06039	
163 Jennifer S. Good	37 Furnace Rd, Lakeville, CT 06039	
164 Jennifer S. Good		
165 Kevin J O'Connor	420 Lime Rock Rd Lakeville CT 06039	
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Letter to the Planning & Zoning Commission

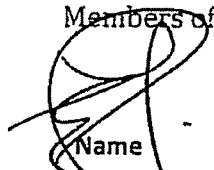
We appreciate the time and energy the members of the P&ZC have spent on issues surrounding the Track. As they discuss the topic of accessory uses and other issues, we would like to offer the following recommendations for their consideration:

- The track is designated as a race track and not an amusement park.
- Sunday events require a special permit from P&Z with responsible oversight in place, such as police stationed at the White Hollow entrance as well as the entrance from Route 112.
- Both entrances to the track are opened during all events to alleviate the traffic back up on state highways as well as White Hollow Road and other accessory roads.
- Racing is not to be allowed on Sundays—for any reason—charitable or otherwise.
- There should be no increase in the unmuffled activity at the Track.

As concerned citizens and homeowners who are entitled to quiet enjoyment of our property, particularly the sanctity of quiet Sundays, we adamantly oppose any proposal that would expand the time permitted to the Track to conduct its races and accessory use activities. While we respect the Track's right to conduct its business, its constant attempts to increase revenues should not trump our rights as citizens and homeowners.

Sincerely,

Members of the LIME ROCK CITIZENS COUNCIL:


Name
Frank Taylor #163
Gilda S. Noyes #164

Address

413 Lime Rock Rd

Relationship to
Lime Rock

on the downhill

p. 11

Lime Rock Citizens Council
Lime Rock, CT. 06068

Exhibit
20

Exhibit 10-20

September 5, 2015

Commissioners of the Planning and Zoning Commission
Salisbury Town Hall
Salisbury, CT 06068

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SEP 08 2015
TOWN OFFICE-SALISBURY
CT

Dear Commissioners:

The Lime Rock Citizens Council represents the interests of the citizens, the greater community of Lime Rock and the surrounding areas that are affected and impacted by the operation of the Lime Rock Race Track. This letter is a direct response and an answer to the proposed changes to the Zoning Regulations - Section 221.1 - Track for Racing Motor Vehicles and the amended tables 205.2 and 205.3 - contained in the Legal Notice to be discussed at a public meeting on September 8, 2015.

We appreciate the effort the Commissioners have put into crafting these zoning revisions and it is in this spirit, that we are outlining our suggested changes.

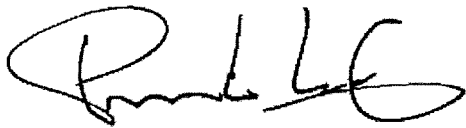
In general, we urge the Commissioners to develop more precise language, and to consider carefully the quality of life issues - noise, traffic congestion, security, water usage - that will impact the local Lime Rock community, on a long term basis, including its particular historic district, as well as the nearby towns and the Housatonic watershed.

1. The proposed change in wording to 221.1 e. adding the word, "consistently" is objected to, as the word is imprecise and subject to interpretation. We don't want to see any more signs that are visible off the premises.
2. The proposed new language in 221.2 which replaces the existing paragraph - 221.1 g Accessory Uses - is too broad, vague and must be qualified:
 - A. Specifically, all of the proposed permitted uses should be allowed and used only during the operation of the track and up to 2 hours before and up to 2 hours after racing is concluded.
 - B. Racing schools and clubs should not be permitted to have overnight accommodations.
 - C. The phrase, "...and other similar activities that are accessory to the operation of a recreational race track herein permitted", is too broad and subject to interpretation and possible abuse.
3. Section 221.4 should be changed with the addition of the following:

All applications for special permits should be posted in local newspapers at least 3 times, with specifics, so that the public can comment before they are issued. No circuses, carnivals or amusement parks or any activities relating to circuses, carnivals and, or amusement parks shall be permitted.

4. A new section, 221.5 should be added to state the following:
Lime Rock Race Track is directly responsible for all security and traffic control inside the track and on all approach roads leading to the track, within one mile of the track, whether the event is controlled and operated by the Lime Rock Track or contracted out and operated by a third party. All violations to be monitored by the Planning and Zoning Commission and appropriate penalties for violations will be determined and assessed.
5. Tables 205.2 and 205.3 need clarification. Does 205.2 refer to special permits for 221.4? And Table 205.3, should detail the accessory activities allowed.

Thank you for your time and attention to this matter.
Lime Rock Citizens Council



Kxh.b.+
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LIME ROCK CITIZENS COUNCIL

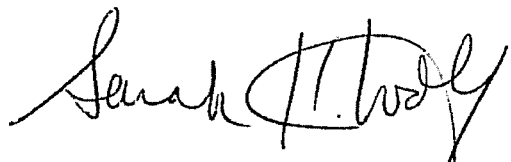
Comments for Public Hearing on Proposed Section 221.1
September 8, 2015

SEP 08 2015

PZC OFFICE - SALT LAKE CITY
UT

- I'm speaking tonight on behalf of the Lime Rock Citizens Council which is a community group organization to represent the residents and neighbors of Lime Rock. I'd like to thank the Commission for giving us the opportunity to speak tonight.
- Lime Rock Citizens Council represents the interests of over 160 people including members of Trinity Church, residents who live in very close proximity to the Track on Rte 112, White Hollow Rd, Dougway Rd and along Route 7, and neighbors who live on Wells Hill, Salmon Kill, and on Britton Hill, who also are affected by the noise and traffic generated by the Track. Later, we will submit a letter that has been signed by these individuals and many of them are here tonight.
- First, I'd like to make clear why we DID NOT organize this Citizens Council - we DID NOT organize to shut down the track. We did not organize to try and impose additional restrictions on the Track. We did not organize just to make life difficult for the Track. Frankly, no one has the time, the energy, or the money to undertake any campaign to disturb the status quo.
- We organized only because we learned that the Track intends to disturb the status quo. We organized only when we learned, directly from the Track's representative, that the Track intends to challenge restrictions that have been in place for over 50 years. Restrictions that the residents and neighbors of Lime Rock always have relied on, including by ensuring that we have one day of peace - on Sundays - to worship at Trinity Church, to spend a peaceful afternoons with our families, to hold community events that are not disturbed by the noise and traffic generated by the Track.
- In our view, the P&Z's Proposed Section 221.1 does nothing more than adopt these very same restrictions that have been in place for 50 years. There is nothing new or different, more restrictive or less restrictive, in Commissions Proposal.
- This proposal should be entirely uncontroversial. It simply protects the rights that both parties here - the Track and the neighbors - already have. And these protections are critical to ensure that the Track has the right to operate its business in a lucrative and productive manner, and that the community surrounding the Track can peacefully enjoy their property.

- We also know that the P&Z Commission has worked for many years with input from both the Track and the Community, to develop a Table of Accessory Uses that in fact affords the Track additional zoning protection in order that it can operate more lucratively and more productively. Some of these Uses, the community did not want. But there has been a history of give and take between the Track and the Community for years – in the spirit of cooperation and co-existing as good neighbors – this is the way we have conducted ourselves.
- For some reason, now, the Track has decided that it needs to take more than it is entitled to. The only possible reason the Track can have for opposing this Proposal is because it wants to disturb the status quo. Skip Barber wants the right to expand his business, to generate more profits, to operate without restrictions, regardless of the impact that has on the larger community. That is not acceptable. And it should not be the burden of the community to have to police the Track; to hire lawyers and experts and spend considerable time and energy just to make sure that our rights as citizens and property owners are protected.
- We support the P&Z's Proposal because it ensures that there is a fair balance between the Track's right to run its business and our rights – the rights of over 160 community members -- to peacefully enjoy our property and our community.



on behalf of the Lime Rock Citizens Council

LIME ROCK CITIZENS COUNCIL
September 20, 2015

Summary of Track's Motions to Modify

Issue	Current Restriction from 1959 Injunction (as amended by Stipulation in 1966, 1988)	Modifications Sought in Track's Motion	Implications
Sunday Racing	No racing / no activity of muffled or unmuffled racing cars on the track or in the paddock areas is permitted on Sundays.	(1) 20 Sundays of muffled activities ¹ / year, starting at 9am on the "upper area" and at 12pm on lower track. All activity to conclude by 6pm. (2) 2 Sundays of unmuffled activities (one of which is reserved as a "rain date"). All activity to conclude by 6pm.	The racing season is, at best, 6-7 /months per year, so this essentially means racing every Sunday from April through October.
Hours of Operation	Racing may not begin before 10 am on Fridays, and before 9am on Saturdays. During the week, "activity" may run past 10pm not more than 6 occasions during one calendar year.	(1) Racing start time on Fridays is changed from 10 am to 9am (2) Racing end time on Saturdays is changed from 6pm to 7pm.	Race weekends start at 9am on Friday, run until 7pm on Saturday, and conclude at 6pm on Sunday.
	No revving or testing of muffled or unmuffled car engines before 9:00 am or after 6pm. Loading and unloading of vehicles may occur between 7:30 am and	Not addressed in Motion	The Track constantly violates the restriction against loading and unloading before 7:30 am and after 7:30 pm.

¹ "Activities" include: racing, qualifying / heats, testing and exercise. Racing on Sundays before 12 pm is prohibited by CT State law. Other "Activities" such as qualifying / heats, testing and exercise, which generate as much noise, traffic, pollution, etc., are not prohibited. The Track's Motion clearly seeks to take advantage of the distinction between racing and other "activities."

	7:30 pm		
Unmuffled Activity	Activity with unmuffled cars (excluding racing) is restricted to Tuesday afternoons from 12:00 – 6:00 pm	<p>(1) Reduce Tuesday unmuffled activity from 52 Tuesday / year to 20 Tuesdays / year</p> <p>(2) Track can conduct unmuffled activity <i>including racing</i> on 5 Thursdays, from 9 am to 6pm.</p>	The Track's season is essentially 6 months / year, so this "reduction" has little to no impact on the number of unmuffled Tuesday practices.
	Not more than 10 Saturday races may be unmuffled, and must end by 6pm.	Track will still have up to 10 Saturdays of unmuffled racing, except end time is 7pm instead of 6pm.	<p>(1) 5 long weekends of unmuffled <i>racing</i>, starting at 9am on Thursdays and concluding at 7pm on Saturday. On one such weekend, unmuffled racing could conclude on Sunday at 6pm.</p> <p>(2) 5 weekends of unmuffled racing running from 9am on Friday to 7pm on Saturday or 6pm on Sunday.</p> <p>(3) This is 10 weekends of 2-3 days of unmuffled activity.</p>
	On the Friday preceding an unmuffled race, between 10 am and 6pm, activity necessary "for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation of the races . . . provided that no heats or races shall be permitted on such Fridays."	Allow for unmuffled <i>races</i> on Fridays.	

Issue	Current Restrictions from 1979 Injunction	Modifications Sought in Track's Motion	Implications
Camping	<p>(1) Camping and camping vehicles are restricted to the Track Infield (the area inside the 1.53 mile asphalt track as it existed in 1979).</p> <p>(2) No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 pm to 6:00 am, except those on (a) on official track business and (b) parked in the parking lot adjacent to the Track office as it existed in 1979.</p> <p>(3) The back road and Race Track entrance, which runs past that property known as the Williams' property, [White Hollow Rd] shall be closed to all traffic between the hours of 11:00 p.m. and 6:00 a.m., except emergency vehicles.</p>	<p>(1) Allow camping in the outfield area in connection with racing events from 6pm the night prior to the race event to noon the day following the race event.</p> <p>(2) Allow overnight parking in the outfield area in connection with racing events from 6pm the night prior to the race event to noon the day following the race event.</p> <p>(3) Allow overnight "camping traffic" on the road and race track entrance between 11:00 pm and 6:00 am on those nights when outfield camping is allowed.</p>	<p>(1) The Motion does not define what a "racing event" is. Presumably, a spectator who is attending a long-weekend event could start camping at 6pm on a Thursday or Friday, and remain on the Track's grounds until 12:00 on the following Monday or Tuesday.</p> <p>(2) This raises serious concerns about security for the surrounding community. Expanded camping facilities will mean hundreds of more race spectators and crew members, most of whom have no connection to the community, staying overnight in the community, for days at a time. There is no limitation on alcohol consumption inside the Track, and campers who do not have to drive home are more likely to over consume. The Track simultaneously proposes to allow traffic to come and go all night, so intoxicated campers can drive in and out of the</p>

			<p>Track, endangering themselves and others. The increased access to the Track also will likely prompt increased "trafficking" of alcohol and drugs between the community and race crews, spectators and campers. There is no provision for security or policing inside or outside of the Track to monitor this type of activity.</p> <p>(3) There is no way to distinguish between "camping traffic" and other race-related traffic. The expanded hours permitting "camping related traffic" will result in ALL TRAFFIC being permitted to leave and enter the Track, including by White Hollow Road, all night long.</p>
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PRESENTATION OUTLINE

Lime Rock Citizens Council, LLC

Salisbury Planning and Zoning Commission October 19, 2015

I. INTRODUCTION

- A. Attorney Tim Hollister; Martin Connor, AICP; Sarah Wolf, Salisbury resident**
- B. As a team, we represent Lime Rock Citizens Council (LRCC), whose membership includes Trinity Episcopal Church, Lime Rock Cemetery Association (both of which abut Lime Rock Park), Music Mountain, and more than 300 individuals**
- C. Aerial photo of track showing location of Church, Cemetery, and Music Mountain submitted as an exhibit**
- D. In this presentation, LRCC will focus only on the proposed regulation**

II. SUMMARY OF LRCC'S POSITIONS REGARDING PZC'S PROPOSED ZONING REGULATION AMENDMENTS

- A. Support proposed incorporation of terms of Litchfield Superior Court injunction into Zoning Regulations, as a way to make the rules governing Lime Rock Park public information, and more importantly, to replace the current private party injunctions and stipulations with enforceable municipal regulation**
- B. In Section VI of this outline, strongly suggest improvements to several sections of proposed text of amendments**

- C. In general, LRCC does not oppose continued operation of Lime Rock Park in compliance with existing restrictions, but opposes Lime Rock Park's attempt to expand its operations by asking a Superior Court judge to modify the existing private lawsuit injunction, thereby bypassing the PZC and the Town. The proposed zoning regulation amendments are not only a fair and equitable but also necessary legal means for the Town to oversee and regulate a major land use within its borders.
- D. As we will explain later (and in response to Attorney Andres' inquiry), the PZC unquestionably has the authority, through the special permit process, to control when and how auto racing occurs, including hours of operation

III. THE CURRENT ANOMALOUS LEGAL SITUATION

- A. Lime Rock Park is controlled today by the terms of an injunction resulting from a 1959 lawsuit between the track owner and private citizens, and subsequent modifications of that injunction, because of two circumstances:
 - 1. The track began operating before Salisbury adopted zoning in 1959; and
 - 2. To date, the Town of Salisbury has allowed Lime Rock Park to keep operating without a zoning special permit or site plan approval because the Park has been generally (though not always) complying with the injunction
- B. However, Lime Rock Park now wants to substantially modify the injunction – thus putting front and center the issue of the Town, through its PZC, stepping up to its obligation to supervise a major land use activity
- C. Very important, widely misunderstood: Lime Rock Park *is currently a non-conforming use*, governed by Section 500 of Salisbury Zoning Regulations:
 - 1. Non-conforming status acknowledged by Attorney Robertson (PZC September 8, 2015, p. 78)

2. Stated by Superior Court in several stipulations and judgments
 3. Park is non-conforming because even though a "Track for Racing Motor Vehicles" is a use listed in Section 221.1 of the Zoning Regulations, *Lime Rock Park has never applied for or received a special permit or site plan approval for track / racing operations; it has chosen to continue operating under the terms of Superior Court injunction and stipulations*
- D. "Grandfathering" based on auto racing in 1959 use is irrelevant to today's situation and the PZC's proposed amendment. Lime Rock Park has a right to continue the basic use – auto racing – that existed in 1959 when Salisbury adopted zoning, but its *present* scope of operations, and its desire to expand operations, are not grandfathered or vested rights.

Notably, any claim that Lime Rock Park has long since abandoned (by operating for decades without Sunday racing) any claim it may have had to Sunday racing as a grandfathered, pre-1959 right.

- E. In general, a non-conforming use is one that *violates* existing regulations (which violation can be the use itself, or failure to have obtained zoning approval); is intended to cease operation at the end of its useful / economic life; and therefore may be maintained and repaired, *but may not be expanded or modified*
- F. Section 503 governs – and generally prohibits – enlargement / expansion of a non-conforming use. Section 500.2 of Salisbury's Regulations states: "[It] is the intent of these Regulations to reduce or eliminate non-conforming situations as quickly as possible."
- G. In addition, in the court cases in which injunctions and stipulations have been entered containing restrictions on Lime Rock Park's operations, *the Park has been adjudicated to be a noise nuisance*, see *Adams v. Vaill*, 158 Conn. 478 (1969) – that is why the Park has been restricted by an injunction in the first place

H. In summary, at this time, as a matter of land use law, Lime Rock Park's operation:

- 1. Is a non-conforming use that violates Salisbury's Zoning Regulations**
- 2. Is a noise nuisance**
- 3. Is controlled only by the terms of an injunction and stipulations entered by the Litchfield Superior Court in a lawsuit involving private parties, not the Town or the PZC**
- 4. As a result, *the burden of monitoring, enforcing, and reacting to proposed modifications to the injunctions and stipulations, and expansions or modifications of operations, is placed on the private parties to the 1959, 1966, 1979, and 1988 court orders—many of whom have passed away, moved, or (if an organization) gone out of existence***

J. CONCLUSION: THE OPERATION OF LIME ROCK PARK, AS A MATTER OF CONNECTICUT LAND USE LAW, MUNICIPAL RESPONSIBILITY, AND FAIRNESS TO IMPACTED PROPERTY OWNERS IN THE VICINITY OF THE TRACK, NEEDS TO BE BROUGHT UNDER THE CONTROL OF THE TOWN THROUGH ITS ZONING REGULATIONS

IV. LIME ROCK PARK'S DISINGENUOUS LITCHFIELD SUPERIOR COURT MOTIONS (see September 8, 2015 hearing Exhs. 17, 18; Tab 5 of this package) [relevant to regulation amendment because it underscores need for regulation]

- A. Lime Rock Park's proposed, substantial expansion of its operations is summarized at Tab 4 of this package; major proposals include 20 new Sunday events, overnight camping, longer race weekends, and extended hours for currently allowed events**
- B. None of this expansion is grandfathered; none is allowed by the current or proposed Zoning Regulations or injunction / stipulations**

- C. The expansion is far more than "one Sunday per year." This claim makes the assumption that "muffled" racing does not cause noise and traffic impacts.
- D. Lime Rock's Motions are a procedural end-run on impacted property owners, the PZC, and the Town: September 4, 2015 Motions to Modify *proposed to give notice only to those private parties to the 1959-1988 injunctions who are still living or organizations still in existence, not the Town, not PZC, and not the 160+ residential property owners who live within 1.5 miles of the perimeter of the track* (see Tab 3 of this package)
- E. Affirming that the Park operates without Town / PZC oversight, the Park is asking a *Superior Court Judge* to allow expanded operations
- F. In addition, Lime Rock Park is asserting that the injunctions should be modified *based on two grounds only (neither of which is documented in the court filings)*:
 - 1. *changes in the auto racing industry since 1988; and*
 - 2. *Lime Rock's undocumented claim that the track is not financially viable without the expanded operations it seeks*
- G. Under Connecticut law, the PZC is supposed to determine allowable land uses, after which our courts may review the legality of that decision. But Lime Rock is seeking Court approval of expanded operations *without having PZC address*:
 - 1. Noise impacts of expansion
 - 2. Traffic impacts of expansion
 - 3. Property value impacts of expansion
 - 4. Environmental / water and air quality impacts of expansion, or
 - 5. Enforcement of expansion

V. LRCC SUPPORTS THE PZC'S PROPOSED REGULATION AMENDMENT, WITH STRONGLY SUGGESTED MODIFICATIONS

- A. Most important, the Zoning Regulations, in Section 221.1, in addition to the Table of Uses, should state that a track for racing motor vehicles is a SPECIAL PERMIT USE in the RE Zone, which will require the track, to become a conforming use, to apply for and obtain a special permit under the procedures and standards stated in the Connecticut General Statutes and Sections 802 to 804 of the Zoning Regulations**
- B. A special permit is the singularly appropriate procedure for regulating an operation like Lime Rock Park:**
 - 1. Special permit use is one that the Commission deems acceptable in a particular zone, but has potential impacts that need to be controlled through the imposition of approved conditions**
 - 2. Requiring Lime Rock Park to obtain a special permit use will bring its current operation and any proposed expansion or change *under time-tested legal procedures*:**
 - a. Notice to potentially impacted parties;**
 - b. Public disclosure requirements;**
 - c. Public hearing procedural requirements and protections;**
 - d. PZC consideration, possibly with expert testimony, of impacts such as noise, traffic, property values, environmental considerations, the Plan of Conservation and Development, and enforcement;**
 - e. Written standards, set forth in Zoning Regulations Sections 802-804;**
 - f. A written PZC decision; and**
 - g. Appeal rights to Court**

- C. Need for special permit regulation articulated by Chair Klemens on July 16, 2015

VI. SUGGESTED IMPROVEMENTS TO PZC'S PENDING REGULATION AMENDMENT

(Note: Consideration of amendments to a legislative proposal at this stage of the proceedings does not require new notices on a new hearing)

(ADDITIONS IN CAPS, [deletions in brackets])

1. In Section 221.1, clarify that the track is a special permit use:
"A track for racing MOTOR VEHICLES [caps in existing PZC proposal], excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, AND car shows, [and certain other events identified in section 221.2 are permitted] SUBJECT TO ISSUANCE OF A SPECIAL PERMIT IN COMPLIANCE WITH THE PROCEDURES AND STANDARDS STATED IN THESE REGULATIONS, and ALSO subject to the following . . . [remainder of Section 221.1 as proposed by PZC]"
2. Delete Footnotes 1 and 2 in proposed Section 221.1, as they imply that the injunction terms are a constraint on the PZC's regulatory authority, which is legally incorrect.
3. Clarify that allowable accessory uses as those that are subsidiary or incidental to the principal use, a "track for racing motor vehicles." Section 221.2 as drafted could be read to state that accessory uses are "permitted" uses, allowed as-of-right, stand-alone uses, whether part of the track's operations or not. Clarify this section to say:

[Permitted] Uses incidental to and accessory to the operation of the track for racing motor vehicles SHALL BE IDENTIFIED ON A SITE PLAN SUBMITTED WITH A SPECIAL PERMIT APPLICATION. SUCH USES include: retail stores, professional or business offices, fire or emergency services, ATMs, restaurants,

and food stands. Incidental accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes; auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses [may] include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.

4. Clarify enforcement. Lime Rock Park premises are regularly "leased" to private clubs, making enforcement problematic. The following new section should be added:

221.5. IF THE HOLDER OF A SPECIAL PERMIT FOR A TRACK FOR MOTOR VEHICLE RACING LEASES ALL OR PART OF ITS PROPERTY TO A PRIVATE ORGANIZATION, IT SHALL REQUIRE THE LESSEE TO COMPLY WITH ALL PROVISIONS OF THESE REGULATIONS, THE SPECIAL PERMIT, AND ITS CONDITIONS.

VII. RESPONSES TO ATTORNEY ROBERTSON'S SEPTEMBER 8, 2015 REMARKS

- A. The Commission clearly has the authority to adopt regulations controlling a major land use within the Town
- B. The proposed regulation is not "micro-management" of an individual business, but public enforcement / responsibility in place of a private injunction
- C. Special permit conditions commonly regulate hours and other operational details of businesses and commercial enterprises
- D. The incorporation of the injunction terms into the regulations proposes *no substantive change to the restrictions that Lime Rock Park purportedly complies with today*

- E. The proposed regulation amendment is not a noise (decibel level) ordinance but a permissible regulation of a land use that emits noise. (In addition, when a town has not adopted a noise ordinance *per se*, state statutes, §§ 22a-67 *et seq.*, govern noise emissions; Torrington Area Health District's regulation also governs.)
- F. The proposed regulation amendment does not "codify an obsolete injunction," but the currently-applicable restrictions
- G. The existing restrictions are reasonable: Lime Rock Park has been operating under them for years!

VIII. RESPONSES TO ATTORNEY ROBERTSON'S OCTOBER 13, 2015 LETTER AND ATTORNEY ANDRES OCTOBER 15, 2015 E-MAIL INQUIRY

- A. Neither General Statutes § 14-164a(a) nor any other statute preempts local regulations of racing or hours. In fact, § 14-164a(a) expressly allows racing to occur during "reasonable hours" on weekdays and Sundays after 12 noon, but "no such race . . . shall take place contrary to the provisions of *any* city, borough, or town ordinances." This section is plainly not the legislature prohibiting municipal control. Other provisions of state law reinforce that towns are allowed to decide whether racing is allowed at all, and if so, when and where, such as the noise statutes, see, e.g., State Regulations § 22a-69.1.8 (auto racing noise criteria applicable IF the Town otherwise allows the activity).

[Note: § 14-164a(a) says nothing about Saturday]

- B. As noted earlier, the hours proposed in the PZC's regulations are by definition reasonable because they are the existing hours stated in the Superior Court orders, and the hours that Lime Rock Park has accepted for decades

C. In response to Attorney Andres:

- 1. The current § 221.1 does not violate § 14-164a, because § 14-164a does not prohibit municipal regulations of auto racing hours; it allows racing during specified hours, subject to municipal limitations on racing itself**
- 2. The terms of the existing Superior Court orders are independent of and unaffected by Salisbury's Zoning Regulations. (Attorney Andres so stated at a PZC meeting on April 19, 2011.) The Superior Court cannot amend Salisbury's Zoning Regulations, except on a direct appeal from adoption or amendment of regulations.**
- 3. The current Zoning Regulation, § 221.1, incorporates the terms of the Court injunction, but at this time, Lime Rock Park is not operating under the provisions of the Salisbury Zoning Regulations; it operates under the terms of the Court injunction. This is the anomalous situation that the PZC needs to rectify.**

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October 19, 2015

Town of Salisbury
Planning & Zoning Commission
Town Hall, P.O. Box 548
27 Main Street
Salisbury, CT 06068

Re: Proposed Amendments to the Salisbury Zoning Regulations, Article II
Section 221.1-4 Track for Racing Motor Vehicles & 205.2-3, Table of Uses

Dear Members of the Commission:

Please be advised that I represent the Lime Rock Citizens Council for the Northwest Corner. At the time of this writing the group consists of over 300 individual members and partners such as Music Mountain, Trinity Lime Rock Church and the Lime Rock Cemetery Improvement Association. At their request I have reviewed the proposed amendments to the Salisbury Zoning Regulations, Section 221.1-4 Track for Racing Motor Vehicles and Section 205.2-3, Table of Uses. After reviewing the proposed amendments I have determined that they are consistent with the Town of Salisbury 2012 Plan of Conservation and Development and with the Town of Salisbury Zoning Regulations. **In particular Article I Section 100.2 Purposes:**

- Section 100.2.a. Promoting and protecting the public health, safety, convenience, and general welfare of the community;
- Section 100.2.b. Conserving and protecting natural resources, such as ridgelines, farmland, wetlands, watercourses, and other sensitive natural resources and areas;
- Section 100.2.d. Conserving the value of buildings and property and encouraging the most appropriate use of land throughout the town;
- Section 100.2.e. Lessening congestion in the streets and securing safety from fire, panic, flood, and other dangers;

Zoning Regulation issues:

1. If the proposed amendments are adopted, a new use will be added to the RE – Rural Enterprise Zone – Track for Racing Motor Vehicles and activities incidental or accessory to will be listed in new Article II Section 221. A Track for Racing Motor Vehicles will be a Special Permit Use.
2. Currently Lime Rock Park LLC, is a pre-existing, non-conforming track for racing motor vehicles use. The citizens of the Town of Salisbury have had to depend on Litchfield Superior Court injunctions that have been in place for 50 years for regulation of the use. The current nuisance injunction prohibits racing on Sundays; limits the Track's hours of operation, including use of the loud speakers and loading and unloading of vehicles; limits the number of unmuffled races; prohibits motorcycle racing, and restricts

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- camping to the infield and limit camping-related traffic. New Article II, Section 221.1-4 incorporates the terms of previous Court Injunctions into the Zoning Regulations. No new or additional restrictions have been added that would prevent Lime Rock Park LLC from operating its business any differently than it has over the years.
3. Currently as required by Connecticut General Statutes Section 8-2, the Salisbury Zoning Regulations do not prohibit the continuance of Lime Rock Park LLC as a non-conforming situation, however the intent of Article V, Section 500.2, Continuance of a Non-conforming Situation in the Regulations, is to reduce or eliminate non-conforming situations as quickly as possible. Lime Rock Park LLC could benefit from changing their status from its present Non-conforming use to a Special Permit Use.
 4. With adoption of the proposed amendments, Lime Rock Park LLC would have the option of filing an application for Special Permit designation as Track for Racing Motor Vehicles and would then become a Special Permit Use as allowed under the Regulations. Rather than going to Court for Injunctive Relief both Lime Rock Park LLC and the Town of Salisbury would deal in the future with any expansions or changes to the track through the normal Planning & Zoning Commission Special Permit/Site Plan application process. This allows for public input and requires a thorough review by the Planning & Zoning Commission under Article VIII Site Plans and Special Permits – Application Requirements, Standards and Procedures.
 5. Future improvements that Lime Rock Park LLC might undertake on their property as a Special Permit Use would require environmental review and the implementation of low impact development techniques.
 6. Lime Rock is a historic district and is listed in the National Register of Historic Places. Site Plan review under Special Permit uses can take protection of historic places under consideration.

POCD Issues – the proposed amendments are consistent with the Town of Salisbury 2012 Plan of Conservation and Development

1. Preserve Natural Resources - Natural resources are key to the overall character of Salisbury and the quality of life, per page 3 of the Plan.
2. Preserve Community Character per page 20 of the Plan. Protecting community character is listed as an important goal of the Town.
3. Strategies – Community Character, Continue to preserve and enhance the physical character of Salisbury. Promote a “dark-skies” approach to land-use and development, per pages 23-24.
4. Things We Want to Protect – Preserve Community Character, per page 51. The proposed Amendments will help protect the neighborhood character,
5. How We Want to Guide Development – Enhance Village Centers per page 52 of the Plan. Clearly creating the Track for Racing Motor Vehicles Regulation as a Special Permit Use for the Village of Lime Rock helps guide development.

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In conclusion, it is my opinion that the proposed amendments should be approved by the Planning & Zoning Commission as they are in keeping with the purposes of the Town of Salisbury Zoning Regulations and are consistent with the Town of Salisbury 2012 Plan of Conservation and Development.

Sincerely Yours,

Martin J. Connor, AICP
Planning Consultant

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CURRICULUM VITAE: Land Use Planning Consultant

QUALIFICATIONS

Over 28 years of experience in the field of land use, involving land use planning, zoning, inland wetlands, floodplain management, building, contracting and private development work.

EDUCATION

1970-1975 B.S. Degree, Business Management, Wayne State University
1994 University of Connecticut, Zoning Enforcement Officer Certification Program (CAZEO)
1999 Certified as Member, American Institute of Certified Planners (AICP)
1999 National Emergency Training Center, Emergency Management Institute, Managing Floodplain Development through the NFIP
1997 & 2000 State of Connecticut, DEP, Wetlands Management Section, Municipal Inland Wetlands Training Program.

EXPERIENCE

1990 to date Principal, Martin J. Connor, AICP, Planning Consultant
Providing land use planning, zoning, inland wetlands & floodplain management consulting services for Towns in the Northwest corner of Connecticut, private clients and developers. Planning, zoning & inland wetlands consultant for the Town of Warren, 1990-1999, Town of Goshen 1994 to present. Presently reviewing planning applications for the Towns of New Hartford, Hartland and Barkhamsted.

1999 to date City Planner, City of Torrington

- Land Use Department Head reporting to Planning and Zoning Commission and Mayor. Directs, administers and coordinates all planning, zoning, inland wetlands, floodplain activities for the City of Torrington. Responsible for continuing development and refinement of municipal plans and programs, conducting studies and preparing recommendations in the areas of zoning, transportation, economic development and housing.

- 1994-1999** Land Use Administrator, Town of Litchfield
Administered and coordinated all planning, zoning, inland wetlands, floodplain and Zoning Board of Appeals activities within the Town of Litchfield. Zoning and Wetlands Enforcement Official for Town.
- 1989-1994** Zoning and Wetlands Enforcement Official, Town of Kent
Administered and coordinated all planning, zoning, inland wetlands and Zoning Board of Appeals activities.
- 1992-1994** Zoning and Wetlands Enforcement Official, Town of Washington
Administered and coordinated all planning, zoning, inland wetlands and Zoning Board of Appeals activities for the Town of Washington.
- 1992-1994** Zoning and Administrator, Town of New Hartford
Administered and coordinated all planning, zoning, and Zoning Board of Appeals activities for the Town of New Hartford.
- 1987-1992** General Partner/Manager, CBS Development/Beecher Construction. General Partner of land Development Corporation and manager for custom home, commercial building and home renovation business.

AWARDS/SERVICE

Named 1997 Connecticut Statewide Inland Wetlands Agent of the Year by CT Association of Conservation and Inland Wetlands Commissions, Inc
Past President Connecticut Association of Zoning Enforcement Officers
Charter Member of Connecticut Association of Wetlands Scientists
Member of CT Land Use Education Committee
Member CT Chapter of the American Planning Association, Currently serving on the Legislative Committee
Board of Directors, Northwest CT YMCA
CT Division of Emergency Management and Homeland Security - Long Term Recovery Coordinator for Region Five

STATE OF CONNECTICUT)

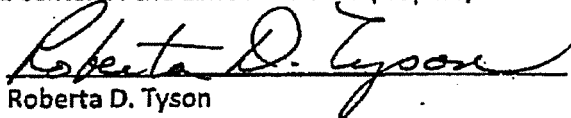
COUNTY OF LITCHFIELD)

ss: Town of Salisbury

AFFIDAVIT

ROBERTA D. TYSON, being sworn says:

- (1) I reside at 128 College Street, Cornwall, Connecticut.
- (2) I have worked continuously as a real estate title abstractor in the villages of the northwest corner of Connecticut for the past 49 years. I am thoroughly familiar with the use of Town land records, Town tax records, and related sources of title information.
- (3) Between September 24, 2015 and October 5, 2015, I examined the tax records of the Towns of Salisbury and Falls Village in order to determine the number of residential houses within the vicinity of Lime Rock Park (the racetrack), as shown in the attached copies of Town tax maps.
- (4) I found that there are approximately 167 such residential houses within a distance of approximately 1.5 miles from the center of the Lime Rock Park property.


Roberta D. Tyson

STUYVESANT K. BEARNS
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2015

Subscribed and sworn to before
me, a Notary Public on

~~October 6, 2015~~

~~OCTOBER 15, 2015~~

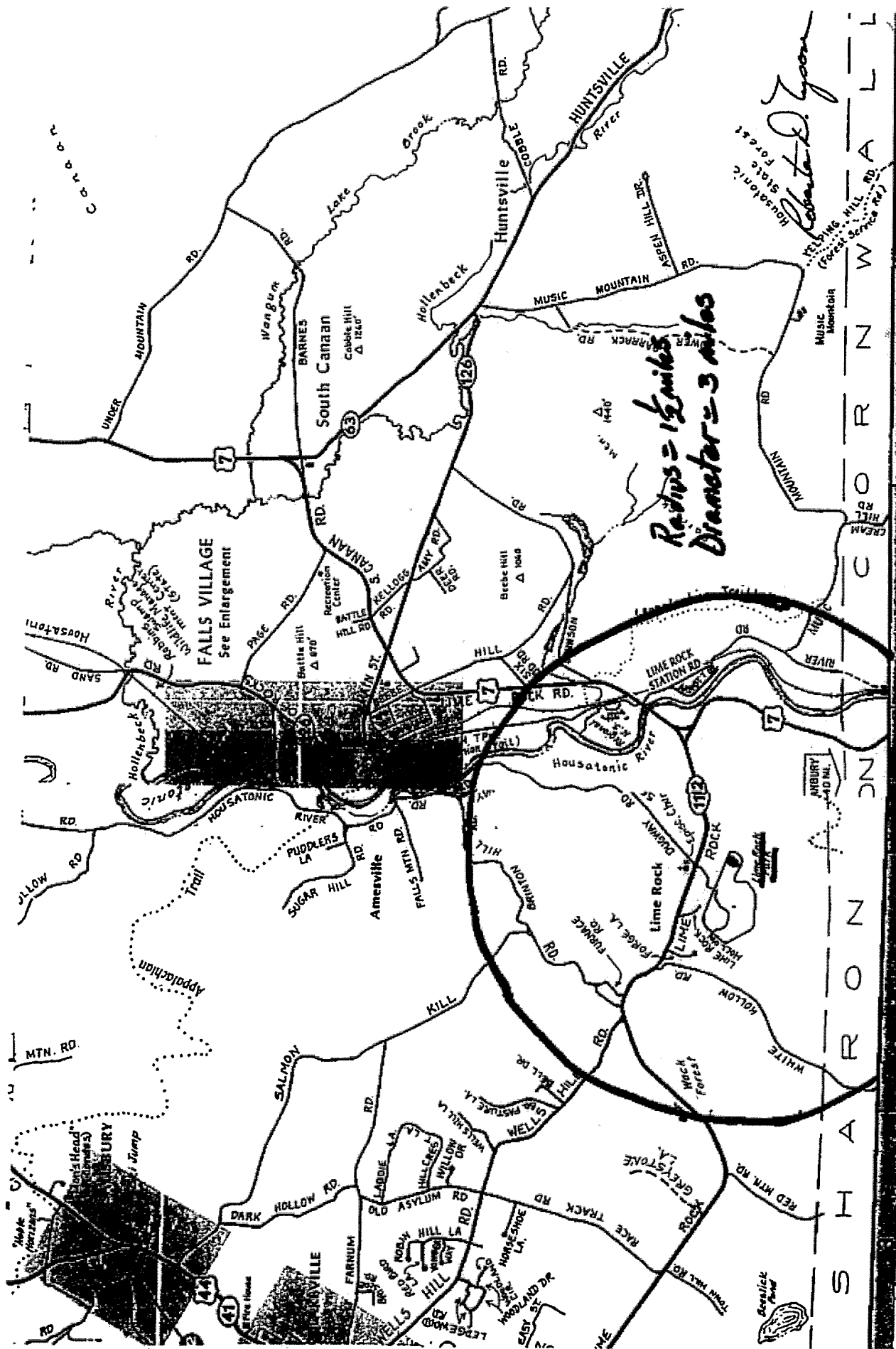

My commission expires

4333046v1

NO. 3909 P. 1

SHIPMAN&GOODWIN LLC

OCT. 15, 2015 2:25PM



Salisbury Planning & Zoning
 Petition to Amend Zoning Regulations
 Section 221.1, Definition, Tables 205.2 and 205.3

The Salisbury Planning & Zoning Commission votes to **approve** the proposed amendments adding Section 221.1, et seq. (TRACK FOR RACING MOTOR VEHICLES), as amended, in lieu of the existing 221.2, and adding a definition of a "Motor Vehicle" to the definition section, and amending Tables 205.2 and 205.3, in accordance with the following findings and reasons:

1. The Amendments at Sections 221.1 and 221.3 set forth restrictions that are *already* part of the Town's zoning scheme. Setting forth the standards in the regulations themselves allows the affected property owners to know what the zoning restrictions are without having to review outside documents.
 - The parameters set forth in subsection 221.1.a are taken from the Amended Stipulated Judgment entered on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield) (the "Vaill action"). This action is the "Court Order" incorporated at Section 221.2a of the existing regulations, and is the most recent order agreed to by the parties in that action. Since at least 1985, the zoning regulations have incorporated the restrictions contained in this court action.
 - The restrictions on camping set forth in section 221.3 are based on the stipulated judgment dated September 19, 1979 in Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury, No. 16,4046 (Judicial District of Litchfield) (the "ZBA action"). That action arose out of a cease and desist order issued by the Zoning Enforcement Officer that was appealed to the Zoning Board of Appeals. The court judgment established the permissible limits of camping in light of the zoning regulations and the current race track's nonconforming status.
2. We recognize that the Vaill action has established parameters for the existing race track operations that have been in effect, in one form or other, since 1959, while the ZBA action has established the standards regarding camping use since 1979. Insofar as zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate those restrictions on land use within the zoning regulations themselves. We nonetheless recognize that the Vaill action is based on private nuisance law, while the authority of the Planning & Zoning Commission derives from the delegated authority to regulate land use set forth by Chapter 124 of the General Statutes. We also recognize the Planning & Zoning Commission is not a party to

Vaill action and that the actual parties to the Vaill action may, or may not, be reflective of those property owners affected by the race track's use of the area.

By setting forth the most recent standards in the Vaill action and ZBA action in the regulations themselves, we clarify the exact standards that are the present "status quo" and that have shaped the conduct and reasonable expectation of affected property owners for decades. We also eliminate the possibility that the zoning regulations could be deemed to be amended if there were to be an amendment to a court judgment in the Vaill action.

At the same time, articulating the current restrictions within the regulations themselves provide a foundation where those expectations can, if appropriate, be changed -- specifically, by the permitting and amendment process set forth in the regulations. It may, in fact, be the case that conditions have changed so that modifications from the Vaill or ZBA standards may be warranted either in a more or less restrictive fashion, or both. We believe that utilization of the current permitting and amendment process, which requires notice and public hearings, will allow affected property owners the opportunity to make changes, where appropriate, apart from whether those changes do or do not coincide with what has been approved in private civil litigation.

3. The proposed amendments also clarify what uses should properly be deemed to be Accessory Uses to a Race Track, and what uses do not fall into that category. This has been a historical "gray area" over the years, and the regulations attempt to provide greater certainty so affected property owners will know in advance what is allowed and what is not allowed as an accessory use. Similarly, the addition of a definition of "Motor Vehicle" (taken from State statute) provides clarity as to what vehicles are covered by the regulations.
4. The proposed amendments also support public health & safety and preserve property values. While it has been alleged that the restrictions in the proposed Section 221.1a (which have existed in some form since at least 1985) are an unauthorized attempt to regulate noise, we disagree. Section 221.1a, as well as the remaining sections, comprise our efforts to regulate a particular *use* (a track for racing of motor vehicles), that, by its very nature, may have substantial impacts on surrounding properties. Those impacts include not only noise, but traffic (including volume, the size of vehicles travelling on narrow streets, and congestion), nighttime illumination, air quality, and changes to property values.
5. We find that it is appropriate to amend the table of uses to list a "track for racing motor vehicles" as permitted by Special Permit in the RE District. The current regulations do not list this as a use allowed in any district, and thus, the present regulations could reasonably be read as prohibiting this use. We recognize, however, that our regulations have permitted the racing of motor vehicles as a specially permitted use in the RE district in the past, and believe that the use was inadvertently omitted from the Table of Uses in the 2013 zoning revisions.

6. The Commission has made certain revisions to the proposed amendments in response to comments and testimony at the public hearing, which changes are within the scope of the advertised legal notice. Those revisions include adding a Section 221.5 (clarifying that the restrictions of the regulations and conditions of any special permit apply when any holder of a special permit leases all or part of its property to third parties), and Section 221.6. (A statement of the Commission's intent as to how the regulations should be interpreted if any part of Section 221.1 is found to be illegal; this has been inserted in light of claims that parts of the existing regulations and proposed amendments may be illegal.)
7. We find that the proposed amendments are consistent with the Town of Salisbury 2012 Plan of Conservation and Development for the reasons set forth by Mr. Martin Connor, AICP, in his oral and written testimony to the Commission.
8. The effective date of these amendments shall be December 1, 2015.

221.1 Track for Racing Motor Vehicles

A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

a. No motor vehicle races shall be conducted on any such track except in accordance with the following parameters¹:

- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows:
 - A. On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - B. Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows:
 - A. On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - B. On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - C. On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.
 - D. In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.

¹ The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations.

- E. On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
- (i) In the event any of said holidays falls on a Tuesday, Thursday or a Friday, there may be unmuffled activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmuffled activity of the Tuesday next preceding the holiday shall be forfeited.
 - (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
 - (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmuffled activity beyond ten (10) as provided in Paragraph b) above.
- (4) Prohibited activity upon the track property shall include the revving or testing of muffled or unmuffled car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
 - (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
 - (6) A "racing car", for purposes of this subsection, is defined as any car entered in an event on an asphalt track.
 - (7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.
 - (8) The parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection.
- b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this amendment to

the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.

c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.

d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.

e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.

f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.

221.2 Accessory Uses to a track for racing motor vehicles may include: retail stores, professional or business offices, fire or emergency services, ATMs, restaurants, and food stands. Accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.

221.3 Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions:

a. All camping and camping vehicles shall be limited to locations within the infield of any asphalt race track existing as of the effective date of this regulation.

b. No motor vehicles shall be parked in any Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are (1) on official track business; and (2) parked in the parking lot existing as of the effective date of this regulation.

c. No traffic other than emergency or service vehicles shall be allowed between the hours of 11:00 pm and 6:00 am on any accessway into any race track that abuts property located at 52 White Hollow Road.

d. The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection.


221.4 The following uses are deemed not to be accessory uses to a track for racing motor vehicles but are allowed subject to a special permit: Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.

221.5 If the holder of a special permit for a track for motor vehicle racing leases or otherwise authorizes a private organization to use all or part of its property to a third party, it shall require said party to comply with all provisions of these regulations, the special permit, and its conditions.

221.6 If any portion of this section 221.1 shall be found by a court of competent jurisdiction to be illegal, it is the intent of this Commission no part of Section 221.1 shall remain valid, including the amended table of uses adopted simultaneously herewith providing that a track for racing of motor vehicles shall be allowed by special permit in the RE District; it being the intent of the Commission that, if it is found that the Commission lacks authority to regulate any aspect of Race Track use as set forth herein, then a track for Racing of Motor Vehicles shall be found to not be permitted in the RE District, and any race track use in existence at the time of the adoption of these regulations shall have such rights as may exist as a nonconforming use under these regulations and Connecticut law.

205.3 TABLE OF ACCESSORY USES

THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS

Farming, gardening, raising of crops or fruit and keeping of farm animals	No Permit Required
Renting of room and board	Zoning Permit
Home office of convenience	No Permit Required
Apartment on Single Family Residential Lot	See Section 208
Keeping horses (max.3)	Zoning Permit
Fence over 8 feet height	Zoning Permit
Family day care home	Zoning Permit
Temporary special events	No Permit or Special Permit
Excavation and grading	Special Permit with exceptions as stated under Section on Excavation and Grading Art.VI
Signs	See Section on Signs
Accessory buildings and structures	Zoning Permit or Site Plan
Dock	Zoning Permit
Construction site trailer	Temporary Use Zoning Permit
Single commercial vehicle max. 200 sq.ft footprint	No Permit Required
More than one commercial vehicle and/or commercial equipment storage	Zoning Permit
Wireless telecommunication antennae	Site Plan
Outdoor Woodburning Furnace	See Section 208
 Activities incidental/accessory to Lime Rock Park, see Section 221	

Skilled nursing, assisted living, convalescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
205.2 TABLE OF USES- Rural Enterprise; Commercial & Industrial Zones page 3						
	RE	C-20	CG-20	LI-1		
Cemetery	Special Permit	Special Permit	Special Permit	Special Permit		
Commercial golf course	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Outdoor commercial uses: skating rink, ski area, golf driving range, tennis court, beach, swimming and picnic areas	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Golf course, outdoor tennis club or riding club sponsored by non-profit organization	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Indoor tennis, racquetball or squash facility	Site Plan	Site Plan	Site Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	Site Plan	Not Permitted		
Musical theater, instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plan	Not Permitted		
* Track for Racing Motor Vehicles	Special Permit	Not Permitted	Not Permitted	Not Permitted		

1	TOWN OF SALISBURY	
2	PLANNING & ZONING COMMISSION PUBLIC HEARING	
3	----- X	
4		
5	IN RE:	
6	Proposed Section 221.1	
7	Track for Racing Motor Vehicles	
8		
9	----- X	
10		
11		
12		
13	HELD ON:	Tuesday, September 8, 2015
14		at 6:45 p.m.
15	HELD AT:	Salisbury Town Hall
16		27 Main Street
17		Salisbury, CT
18		
19		
20		
21		
22		
23		
24	Court Reporter Viktoria V. Stockmal,	
25	License #00251,	
	a Notary Public in and for the State of Connecticut	

ALLAN REPORTING SERVICES
(860) 693-8557

1 Commissioners can get copies. Very good.

2 Okay, the next speaker will be a representative
3 of the Lime Rock Citizens Council.

4 MR. KLEMENS: You're on the timer.

5 MS. WOLF: On the clock?

6 MR. KLEMENS: You're On the clock, yes.

7 MS. WOLF: My name is Sarah Wolf. I'm a
8 resident at 45 White Hollow Road in Lime Rock.

9 Speaking tonight on behalf of the Lime Rock
10 Citizens Council which is a community group organized to
11 represent the residents and neighbors of Lime Rock. I
12 would like to thank the Commissioners for giving us the
13 opportunity to speak tonight.

14 Lime Rock Citizens Council represents the
15 interests of over 160 people including members of Trinity
16 Church, residents who live in very close proximity to the
17 race track on Route 112, on White Hollow Road, on Dugway
18 Road and along Route 7. And also neighbors who live up
19 Wells Hill, on Salmon Kill and on Brinton Hill. Later
20 tonight we will submit a letter that has been signed by
21 these individuals and many of them are here tonight.

22 First, I would like to make clear for everyone
23 why we did not organize the Citizens Council. We did not
24 organize to shut down the track. We did not organize to
25 try and impose additional restrictions on the track. We

1 didn't organize just to make life difficult for the
2 track. Frankly, no one has the time, the energy or the
3 money to undertake any campaign to DISTURB the status
4 quo.

5 We organized only because we learned that the
6 race track wants to disturb the status quo. We organized
7 only when we learned directly from the track's
8 representative that the track intends to challenge the
9 restrictions that have been in place for over 50 years.

10 Restrictions that the residents and neighbors
11 of Lime Rock always have relied on, including by ensuring
12 that we have one day of peace on Sundays to worship at
13 Trinity Church, to spend a peaceful afternoon with our
14 families, to hold community events that are not disturbed
15 by noise and traffic. And argue the Planning & Zoning's
16 proposal does nothing more than adopt the very same
17 restrictions that have already been in place for 50
18 years. There is nothing new or different; more
19 restrictive or less restrictive in the Commission's
20 proposal. And argue this proposal should be entirely
21 uncontroversial. It simply protects the rights of both
22 parties here, the track and the neighbors already have.
23 As Commissioner Klemens referenced in his opening
24 comments, these restrictions are so old they have been
25 grandfathered in to the zoning regulations.

1 And these protectionS are critical to ensure
2 that the track has the right to operate it's business in
3 a lucrative and productive manner and that the community
4 surrounding the track can peacefully enjoy their
5 property.

6 We also note that the Planning & Zoning
7 Commission has worked for many years with input from both
8 the track and the community to develop a table of
9 accessory uses that in fact affords the track additional
10 zoning protection in order that it can operate more
11 lucratively and more productively. And some of those
12 uses, the members of the community didn't like all that
13 much.

14 But there has been a long history in Lime Rock
15 of give and take between the track and the community in
16 the spirit of cooperation, of coexistence as trying to be
17 good neighbors, this is the way we have conducted
18 ourselves. Give and take.

19 And for some reason now the track wants to take
20 more. The track has decided that it needs more than what
21 it already has. And the only possible reason that the
22 track can have for opposing this proposal is because it
23 wants to disturb the status quo.

24 It wants the right to expand it's business, to
25 generate more profits, to operate without restrictions

1 regardless of the impact it has on the larger community.
2 And that is not acceptable to us. And it should not be
3 the burden of the people of the Lime Rock community to
4 have to police the track, to hire lawyers and experts and
5 spend considerable time and energy just to make sure that
6 our rights as property owners are protected. That's why
7 we support this proposal.

8 We support this proposal because it ensures
9 that there is a fair balance between the track's right to
10 run it's business and our rights, the rights of over 160
11 community members to peacefully enjoy our property and
12 our community.

13 And I just quickly would like to respond to the
14 track's counsel's comments he made. Mr. Robertson made a
15 distinction between his opposition in form and in
16 substance. In form he said he doesn't think it's proper
17 form to basically just drop the terms of the injunction
18 into the zoning regulations. But as Dr. Klemens said,
19 these restrictions, the terms of the injunction have
20 already been grandfathered in. So there's nothing that I
21 can see in terms of form that's objectionable to. And in
22 terms of substance, Mr. Robertson I think very
23 diplomatically didn't go into the details of the
24 substance that they oppose but whatever substance it is
25 we don't think it's acceptable.

1 MR. KLEMENS: Your time -- Your time is
2 expired. Thank you.

3 MS. WOLF: Thank you.

4 MR. KLEMENS: I am going to take the sheets and
5 go across, try to mix them up. The first speaker --

6 MS. WOLF: I want to make that an exhibit.
7 These are my comments.

8 MR. KLEMENS: Where is the original?

9 MS. WOLF: That should be it. Let me sign it.

10 MR. KLEMENS: Additional -- Everybody else who
11 have an exhibit, if you could enter them in before you
12 start to speak, it will not be taken off your speaking
13 time. This is Exhibit 19.

14 The first speaker is Terry Dunn.

15 MS. DUNN: I'm Terry Dunn, but I would like to
16 postpone my speech until October 19th's, meeting.

17 MR. KLEMENS: Wait a second. There's two
18 people.

19 A WOMAN: I'm just asking if I have to --

20 MR. KLEMENS: Not now. When you speak. When
21 you speak. Not now. I'm sorry. I --

22 Terry Dunn, you do not want to speak?

23 MS. DUNN: I will postpone until October 19th.
24 Thank you.

25 MR. KLEMENS: Wendy Anderson, 24 White Hollow

1 MR. KLEMENS: Peter Wolf?

2 MR. WOLF: I'm Peter Wolf, W-O-L-F. I live at
3 45 White Hollow Road. The zoning -- the Planning &
4 Zoning Commission has been going at this for a long time.
5 And it has been -- I want to thank the Planning & Zoning
6 Commission for the work they've done. I've spent a lot
7 of time here in the last couple of years. It always
8 seems to be because the track is trying to do something.
9 We never instigated any activity against the track. We
10 certainly responded to what they had been doing, what we
11 see as attempted expansions here and there. I don't see
12 this as anything other than a furtherance of that.

13 The injunction has been in place for a long
14 time. I can't see any harm in adding the language of the
15 injunction to the zoning regulations. It doesn't
16 restrict the track any more than they are already
17 restricted. In fact, I guess it actually, if the table
18 of uses is adopted, they would actually have -- it would
19 expand what they can do.

20 So the only other thing that has struck me
21 tonight is that there have been a number of people
22 speaking and it surprised me that aren't members of the
23 community. And they are obviously supporters of the
24 track. And which I understand and which I'm sympathetic
25 too, but it's really not their issue. It's our issue.

1 It's an issue between the track and the community
2 surrounding the track and the town.

3 So whether they like the track or don't like
4 the track is really not relevant to this discussion, as
5 far as I'm concerned. What's relevant is what the track
6 does and doesn't do and how it interacts with the
7 neighborhood. And all we're asking is that things don't
8 change. That they stay the way they are. And obviously
9 trying to -- they're attempting to move the boundaries
10 once again. Thank you.

11 MR. KLEMENS: Thank you. Douglas Howes, 442
12 Lime Rock Road?

13 Mr. HOWES: Good evening. My name is Doug
14 Howes, H-O-W-E-S. Everybody else has trouble spelling
15 it, too.

16 So first I would like to thank you Commissioner
17 Higgins for all the work that he has tirelessly done and
18 has really gone completely un -- under recognized in the
19 table of uses. I know he has been one of the prime
20 people to work on it for many years.

21 I would also urge that the Commissioners look
22 very carefully at Exhibit No. 3. I had hoped to read it,
23 but time being limited, I'm not going to. It's a letter
24 from Laura Linney who lives on Britton Hill and who many
25 of you are familiar with from her work in films. She

1 wrote a passionate letter and her feelings were echoed by
2 many other -- many other part-time homeowners who value
3 their quiet Sundays and the continued quality of life
4 that they enjoy and cherish.

5 Many of them are not able to be here tonight,
6 but again, I urge the Commission to remember that these
7 people pay taxes and support many of the local
8 businesses.

9 And without any further, I hope that you will
10 take these zoning things as proposed and pass them as
11 they are. Thank you.

12 MR. KLEMENS: Thank you.

13 Stuyvesant Bearns, Valley Road, Lakeville.

14 MR. BEARNS: Stuyvesant Bearns, B-E-A-R-N-S, I
15 live on 38 Valley Road, Lakeville, the other side of town
16 from the track. Thank you Commissioners for all you put
17 into this. I mean it.

18 Number 2, I would ask you to consider an
19 amendment to item 5, the use of the track loudspeakers is
20 prohibited between 8 a.m. and 7 p.m. That does not rule
21 out the use of the loudspeakers between 8 and 9 a.m. on
22 Sunday and 10:30 and 12 on Sunday when Trinity Church
23 conducts it's usual services.

24 The signal aspect of a loudspeaker is that it's
25 very loud. And I know from experience that when the

1 loudspeakers are used, they drown out what's going on in
2 the church. I do ask you to consider an amendment to 5
3 to include those hours of religious service as a
4 prohibition.

5 I would ask you also to take a very close look
6 at 7, racing motorcycles properly. I believe you
7 prohibit racing motorcycles, but I'm concerned that you
8 allow practice. To practice racing is just as loud as
9 racing.

10 So I wish you would spend a little more time on
11 7 and see if you can't tighten that up. Thank you.

12 MR. KLEMENS: Thank you. David Perlman from
13 Wappingers Falls.

14 MR. PERLMAN: I am Dave Perlman from Wappingers
15 Falls, New York. Thank you very much. P-E-R-L-M-A-N.

16 I've been coming to this track for 55 years and
17 I know I'm not a neighbor and I sympathize with some of
18 you. However, I came as a spectator a worker, a racer
19 and a steward who administers the races. There have been
20 several track owners and the current owner is responsible
21 for beautifying this place as a park. It's a beautiful
22 place.

23 Many new houses have gone up along White Hollow
24 Road that I've noticed in my 55 years of driving up that
25 road at least five or six times a summer. And I see some

1 very expensive houses and I don't see that -- I don't
2 know how they are affected by it, but the place keeps
3 crowding up and I'm sure they knew that the track was
4 there.

5 Which brings to mind another track. This track
6 was Bridgehampton down in Long Island. Neighbors moved
7 in on the periphery of the track and complained about the
8 noise to the Southampton board. Eventually there was
9 injunction brought against the track. And the current
10 owner of that track asked for very few limited days that
11 he could have a professional race there. It was an
12 internationally known track. He was refused and instead
13 he built a golf course. But unfortunately the golf
14 course was on the purest aquifer on Long Island which was
15 the Bridgehampton racetrack 500 some odd acres.

16 We don't really know where this is going, but
17 if it goes the way Bridgehampton goes, we don't know what
18 will become of this beautiful park. Thank you.

19 MR. KLEMENS: Colin Chambers from Falls
20 Village, please?

21 MR. CHAMBERS: I signed the wrong thing.

22 MR. KLEMENS: Elizabeth Kahn from Lime Rock
23 Road?

24 MS. KAHN: I signed the wrong form.

25 MR. KLEMENS: You do not wish to speak? Okay.

1 Christopher Little from Lime Rock Road?

2 MR. LITTLE: I'm not going to --

3 MR. KLEMENS: No? Does not wish to speak.

4 Sarah Wolf from White Hollow Road? Sarah's
5 already spoken I think.

6 MS. WOLF: I will wait for your second round.
7 Thank you.

8 MR. KLEMENS: Karen McGuinness from Rolling
9 Hills in Sharon? Karen McGuinness?

10 Bill Mitchell from Cheshire? Bill Mitchell?

11 Another Mitchell, Betty or Bethy Mitchell?

12 Rob Keller from Lime Rock Road?

13 MR. KELLER: If I speak tonight and sign in at
14 October's meeting, I can speak that night as well?

15 MR. KLEMENS: You can speak in October. You can
16 speak tonight. Just can't speak to Commissioners in
17 between.

18 MR. KELLER: My name is Rob Keller.
19 K-E-L-L-E-R. I live at 418 Lime Rock Road and for the
20 record I would like to say I agree with everything my
21 wife said. She's not here, so if you see her, tell her
22 that.

23 We bought our house in 1988 and over the course
24 of a long time I've dedicated substantial time and
25 resources into restoring it. I would say that we found a

1 house when I came up to a Ferrari event at the track. So
2 I'm familiar with the track. I took the Skip Barber
3 Racing School. I enjoy going fast around the track when
4 I can afford to do that. Having said that I also like
5 quiet Sunday afternoons. I like the quality of life we
6 have in Lime Rock. Nobody's ever come up to the door and
7 knocked on the door and says jeez, you live in Lime Rock
8 Connecticut, the race track is here, I want to buy your
9 house. I'll write a check right now. That has not
10 happened.

11 But there's sort of a whisper thing when people
12 find out you live in Lime Rock, oh, the track is there.
13 Well, you know I like the track. I like looking at nice
14 cars. I also like my quiet Sunday afternoons. I would
15 suggest that you adopt the injunction into the -- what
16 you are proposing to do and what you've apparently spent
17 a lot of time unknown to me working on.

18 So I would like to thank you, the Commission,
19 for that. Thanks.

20 MR. KLEMENS: Thank you.

21 Rachel Lamb?

22 MS. LAMB: Thank you, but I will pass.

23 MR. KLEMENS: Jeff Silvernale, 442 Lime Rock
24 Road?

25 Mr. SILVERNALE: I'll pass.

1 MR. KLEMENS: Georgia Petrie (ph.), 549 Lime
2 Rock Road?

3 MS. PETRIE: I will defer to October, please.

4 MR. KLEMENS: October. Moving right along.
5 This is great. Christopher Fitch, 339 Housatonic River
6 Road?

7 Mr. FITCH: I thought that was an attendance
8 sheet there.

9 MR. KLEMENS: All right. Okay. You will get
10 credit for attending. Tom Light (ph.)?

11 Mr. LIGHT: I'll pass.

12 MR. KLEMENS: Is Mr. Light here?

13 MR. LIGHT: Pass.

14 MR. KLEMENS: He's going to pass. Okay. Thank
15 you.

16 Robin Leech?

17 Mr. LEECH: I'm here.

18 MR. KLEMENS: If you are going to talk, you
19 have to come up.

20 Mr. LEECH: I'll say a few words.

21 I'm Robin Leech. I'm a real estate broker
22 here. Many of you know me. Some of you don't.

23 L-E-E-C-H, R-O-B-I-N. Short for Robinson.

24 Anyway's, having been selling real state for
25 40-plus years in this community, I have had ample time to

1 get to know the Lime Rock vicinity as a base of real
2 estate houses that have come on the market and I have
3 sold some, I have listed some also. And I have
4 introduced Lime Rock to several clients, some of whom are
5 in this room, and those that have wanted to buy around
6 the track have been told what the track can do and what
7 the track has not been able to do because of the
8 injunction that was set up in 1959.

9 The only expansion of disturbance to the Lime
10 Rock community that I can say has occurred in those 50
11 plus or minus years has been the increase size of the
12 engines and therefore the increased noise that those
13 engines make for the area -- for the people who live in
14 the Lime Rock vicinity. That in itself has increased the
15 disturbance to the Lime Rock community.

16 I cannot tell anybody who wishes to buy
17 property in Lime Rock that their values will go up if
18 they indeed purchase a home in Lime Rock. And
19 unfortunately as much as I like the track and I go to the
20 track and I have utilized the track services, the Skip
21 Barber driving schools and enjoyed every lap around the
22 track, it still has an effect in a negative sense on real
23 estate values in this community.

24 Is there an envelope of which that disturbance
25 stops? Unfortunately not. It's atmospherically

1 controlled to a large degree. If the wind is blowing
2 south and there are heavy clouds, I can hear it in my
3 home in Sharon, Connecticut. Although it is like a
4 beehive and doesn't disturb me in the slightest.

5 But I have been able to represent to people
6 looking for homes in Lime Rock, and I say this, you can't
7 get a better deal than you can get buying a home in Lime
8 Rock. But if you buy a home in Lime Rock, be prepared to
9 stay there 10 or more years because you probably can't
10 get out with any profit. And it will take 10 times
11 longer to sell a house in Lime Rock if -- and that's just
12 a generalized statement without knowing exactly what the
13 timeline would be.

14 Every case is different. The Lime Rock track
15 should be able to exist the way it was allowed to exist
16 in the 1959 injunction. Maybe there are a few areas in
17 which a slight expansion use would be, but the noise
18 level should not be allowed to increase other than
19 through normal change in cars; because I don't think you
20 can control the decimal level and set it into zoning
21 regulations.

22 Other than that, I believe Lime Rock has it's
23 place in town. Everybody knows -- thank you.

24 MR. KLEMENS: Thank you. Okay. Heather
25 Chapman, Sugar Hill Road?

1 comments. We will try to respond in writing to each of
2 your comments. As to the Music Mountain, there's been a
3 lot of misinformation about what the park wants to do to
4 survive. And I think as I read in the paper this
5 morning, Music Mountain is concerned the track will
6 pollute their music and put them out of business. That's
7 the last thing Skip Barber wants. Paragraph 12 in the
8 motions where we list what areas we're looking for is one
9 Sunday. One Sunday out of the year as opposed to all of
10 the competing tracks.

11 So thank you, Mr. Chairman. I will reserve
12 whatever other time I need for October.

13 MR. KLEMENS: I think our counsel has some
14 questions for you.

15 MR. ANDRES: Yeah. Mr. Robertson, I appreciate
16 your comments and you said you indicated you expressed
17 these in a letter and I did see that earlier today. What
18 would be helpful for me to advise the Commission if I
19 could ask you to -- let you know what I'm thinking so you
20 can address it so everything is on the record.

21 MR. ROBERTSON: Fine.

22 MR. ANDRES: Right now, the existing
23 regulations, say nothing happened. Say they left it as
24 it is. The regulation reads: No motor vehicle races
25 shall be conducted on any such track except during such

1 hours as permitted by court order dated 5/12/59 and
2 subsequently Court orders on file in the Planning &
3 Zoning office or the Town Clerk's office.

4 So I'm reading that, just reading it, you know,
5 taking it out saying there's a limitation on hours of
6 operation that are set forth in the injunction paperwork.
7 I think what this is doing -- and maybe those are bad
8 hours. Maybe they need to be changed. Maybe they are
9 unwise for all the reasons you said. Things evolve. I
10 get all that.

11 But I think what this, as I read what the
12 interpretation is doing was simply saying what those are.
13 In other words, instead of having to look at the five,
14 12, 59 subsequent related court orders because there's a
15 bunch of them, I think there are over three at least --

16 MR. ROBERTSON: It's evolving. And continuing
17 to evolve.

18 MR. ANDRES: So what does that mean? That
19 language means something. That is an hours of operation
20 restriction. So what I understood this to be doing was
21 take the latest one, because you don't really care about
22 the earlier ones, the latest ones are from 1988, and list
23 what those hours of operations are. Those limitations.
24 And that's what I think they are. You can say well wait
25 a minute, that doesn't relate to hours of operation. If

1 there was something about noise levels, because I agree
2 100 percent.

3 They don't have authority. I told them that.
4 You don't have authority to adopt a separate noise
5 regulation. I saw this as simply an hours of operation
6 and that is what is on the records now.

7 If it doesn't mean that, what does it mean? I
8 mean that's what I'm trying to understand. What do you
9 think that sentence means now?

10 MR. ROBERTSON: What that injunction dealt with
11 was a complaint about noise. And therefore there was a
12 hearing and the Court entered the noise abasement.

13 MR. ANDRES: I --

14 MR. ROBERTSON: What you have done is
15 incorporate all the details of that into the regulations.

16 MR. ANDRES: Isn't it already incorporated?
17 That's my point. It has the -- It says no motor vehicle
18 shall be conducted on such track except during the hours
19 in the injunction. That's in the regulations now. Maybe
20 it's bad idea to do that, but it is. That's what I'm
21 trying to see why is this different than what is there
22 now? If you could think about that and explain that -- I
23 won't put you on the spot either. Because that's what
24 I'm struggling with. That would be helpful for me to
25 know. Maybe it's bad to do that. I get that. But

1 that's what I think it does now.

2 MR. ROBERTSON: It's bad to do that because in
3 October the court has ordered a hearing on all of the
4 issues in the injunction. What we have done in our
5 motion is to say look, circumstances have changed, an
6 injunction is an equitable remedy that only relates to
7 the circumstances at that time. We think that that --
8 the terms of that injunction will be changed to bring it
9 into -- we're not trying to make people of Lime Rock
10 miserable. It's a very reasonable and appropriate
11 change. At that point, under the argument that you're
12 giving is that you will have codified an obsolete
13 injunction. That's why we are objecting to it.

14 MR. ANDRES: My point is it's codified now.
15 Even if you change it it's still -- so maybe the existing
16 regulation isn't good. I get that point.

17 MR. ROBERTSON: There you go.

18 MR. ANDRES: But I don't think it changes
19 things. The suggestion is that we are doing something
20 totally new and different. I'm just reading if we did
21 nothing, I think that no Sunday racing, all the terms of
22 that '88 injunction are in the regulations now. And
23 maybe they shouldn't be, but they are. And this just
24 says what they are.

25 MR. ROBERTSON: I agree with the latter part of

1 your statement they shouldn't be. And I disagree with
2 the former part that they --

3 MR. ANDRES: Well, maybe you can amplify
4 that.

5 MR. ROBERTSON: You say it's no change, then
6 why are you doing all this?

7 MR. ANDRES: In your presentation, tell me why
8 this isn't already in the regulations? Because that will
9 be helpful for me to advise the Commission.

10 MR. ROBERTSON: I would ask the Commission if
11 it's the Commission's position that it's already in the
12 regulations, why are you putting everybody through this?

13 MR. ANDRES: Well one reason, as I understood
14 the chairman, is because it is a bad idea to have zoning
15 regulations, you know, related to a private lawsuit.
16 Let's just get what it is now and if you want to change
17 your private lawsuit whatever, that's one thing. But
18 let's just put the status quo in now and if you go
19 through the zoning process, you might want to change it.

20 MR. ROBERTSON: Again, not to carry the debate
21 out, what I said in the letter to the Commission, what
22 our position is now is look, the season is almost over.
23 There's going to be an evidentiary hearing. If you want
24 to start incorporate a language from an injunction, wait
25 until the Court rules on it which will be sometime in the

1 TOWN OF SALISBURY
2 PLANNING & ZONING COMMISSION PUBLIC HEARING
3
4 ----- X
5 IN RE:
6 Proposed Section 221.1
7 Track for Racing Motor Vehicles
8
9
10 ----- X
11
12
13 HELD ON: ~~October 19, 2018~~
14 at 6:58 p.m.
15 HELD AT: Salisbury Town Hall
16 27 Main Street
17 Salisbury, CT
18
19
20
21
22
23
24 Court Reporter Viktoria V. Stockmal,
25 License #00251,
a Notary Public in and for the State of Connecticut

1 REVEREND MONTI-CATANIA: Good evening,
2 everyone. I'm reverend Monti-Catania. As pastor of this
3 church I welcome you to this historic meeting house
4 which, in addition to church-related functions for more
5 than 200 years, has been used by and for this community
6 for public gatherings and meetings. It's a welcome use
7 and we're happy to have you here.

8 Often over the 200 year history, controversial
9 subjects have been discussed. And so as a church we wish
10 to clearly state that we neither endorse for oppose any
11 issues on public forums just because they are convened
12 here.

13 So I wish you peace on your spirited debate.
14 Thank you for coming out tonight.

15 MR. KLEMENS: It's 7 o'clock and this is a
16 continuation of a hearing that began a month ago. This
17 is the public hearing on proposed amendments of Section
18 221.1, 205.2, 205.3 of our regulations and to add a
19 definition of "motor vehicle" to the Salisbury zoning
20 regulations.

21 I would like to introduce the members of the
22 Commission that are sitting here tonight. To my extreme
23 right is Commissioner Cockerline. Next to him is Vice
24 Chairman John Higgins. Our zoning enforcement officer
25 and staff liaison, Ms. Nancy Brusie. I'm Michael

1 Klemens. I am the chairman of the Commission. To my
2 left is Charles Andres. He is our attorney. Going down
3 the table is Kathy Schyer who is a Commissioner. She's
4 recently been appointed to fill the vacancy of Fred
5 Schmidt. Then we have two alternates, Michael Flint who
6 has been seated this evening to vote and Danella Schiffer
7 who is an alternate also. As is the policy of this
8 Commission, alternates are allowed to fully participate
9 in the discussion and in the questioning.

10 This is going to be a somewhat different format
11 than the previous hearing. We are going to have the Lime
12 Rock Citizens Council go first. They will have ten
13 minutes to begin their presentation. Then Lime Rock Park
14 will have ten minutes to begin their presentation. Then
15 the Commission will have a chance to ask the applicant --
16 I'm sorry, they are not applicants -- the two parties
17 questions. We are, the Commission is the applicant
18 actually. We are proposing these regulations. We will
19 ask questions.

20 Then it will be turned over to the public.
21 There are sign up sheets if you wish to speak. Let me be
22 very clear, you don't have to sign up in order to speak.
23 However, it's going to help me manage the flow of this
24 hearing if you do sign up.

25 After we move to the public comment, I will go

1 to the sign up sheets. Then I will ask people who
2 haven't signed up who wish to speak. And then I will go
3 back to people who have spoken before that wish to speak
4 again. It is my hope, my fervent hope that we are going
5 to close the hearing this evening. The Commission has
6 received a voluminous amount of material. How many
7 exhibits? 800?

8 MS. BRUSIE: 836.

9 MR. KLEMENS: 836 exhibits plus three more.
10 Many of those exhibits are e-mails that are basically
11 fairly saying the same thing; but none the less, they all
12 have to be exhibited and put into the record.

13 Let me speak about the ground rules. You will
14 have three minutes to speak. I will let you know when
15 your time is up. Now let me be clear what this hearing
16 is about. This hearing is not about whether or not the
17 track should exist. This hearing is not to log the
18 accomplishments or denigrate the accomplishments of the
19 track or Skip Barber. This hearing is not about racing
20 on Sundays, not about all the many other things that have
21 been circulating around the community from both these
22 parties. This is a very narrowly focused hearing on our
23 zoning regulations.

24 And I will ask you to keep to that topic. If
25 you stray off topic, I will exercise my privilege to cut

1 you off and to tell you to stay on topic. Because we
2 want to get through everyone tonight that has something
3 to say. Rest assured if you have anything to say, you
4 will have a chance to be heard. If after your three
5 minutes or your ten minutes you wish to continue, we will
6 allow you to continue.

7 I would also ask people to please have the same
8 decorum we had last time. I would ask you not to
9 applaud, not to boo, not to make other expressions about
10 the speaker. I would ask you also not to make faces at
11 the Commission. Now that actually constitutes a form of
12 inappropriate communication, so I'm going to ask you not
13 to do that. I would ask you to remain -- remember we are
14 are all citizens of this community. We serve without
15 compensation, this Commission, and we are trying very
16 hard to conduct a balanced and fair hearing. Please bear
17 that in mind.

18 Also some people are very intimidated by
19 clapping and booing, and it will also have the
20 inadvertent effect of stifling a free and open dialogue
21 with all members of the public.

22 So having said that. Our attorney has one -- a
23 couple pieces of housekeeping to conduct.

24 MR. ANDRES: One of the issues that could
25 possibly come up, if there were to be an appeal, which we

1 are certainly hopeful that doesn't happen, is a question
2 of whether any Commission member has pre-judged the
3 application. That is has decided what the -- how they're
4 going to vote even before the public hearing has
5 finished. And what I would like to do, just for the
6 record, is to poll each of the individual members to get
7 that on the record. And I will start with the -- my left
8 with Ann -- we don't know who actually votes so I will
9 ask both the alternates and the regular members.

10 Ms. Schiffer, have you made up your mind in advance of
11 this hearing how you are going to act and are you open to
12 the information that's going to be received?

13 MS. SCHIFFER: No, I have not made up my mind;
14 and yes I'm open.

15 MR. ANDRES: Thank you. And we'll follow up
16 with Mr. Flint?

17 MR. FLINT: I am open to the information. I
18 have not made up my mind; but I also think we need to be
19 cognizant of the fact that this Commission crafted and
20 presented it. So when I say that, I want people to
21 remember that fact that we were involved with actually
22 creating this and moving it forward.

23 MR. ANDRES: Excellent.

24 Ms. Schyer?

25 MS. SHYER: I'm open to the Commission and no,

1 I have not made up my mind.

2 MR. ANDRES: Mr. Klemens?

3 MR. KLEMENS: I have not made up my mind. I
4 welcome more information.

5 MR. ANDRES: Mr. Higgins?

6 MR. HIGGINS: As with every situation that comes
7 before the Commission, no, we don't make up our minds
8 until we hear everything that's presented.

9 MR. ANDRES: And Mr. Cockerline.

10 MR. COCKERLINE: I'm looking forward to an
11 eventual discussion and deliberation by this Commission
12 and then make up my mind at that point.

13 MR. ANDRES: One other housekeeping matter I
14 would like to do so communicate that I am going to insert
15 into the record some copies of older zoning regulations
16 that will give an idea -- one of the issues is are we
17 doing something new this evening. And in particular, I
18 have copies of zoning regulations from 1985, from 2004,
19 2008 and I thought I would get them into the record. The
20 1985 regulations for the RE Zoning District provide that
21 race track is allowed by special permit. And in terms of
22 hours of operation, that hours language is the reason for
23 what is today provided that -- Well let me see. No races
24 shall be conducted on any such track except during such
25 hours as permitted by court order dated 5/12/59. So that

1 was in the 1985 regulations.

2 The 2004 regulations had that same language.
3 Also had language about a race track, although it is
4 omitted from the Table of Uses. The way the zoning
5 regulations were adopted in 1985, the actual RE Zoning
6 District listed all the uses that are allowed both as a
7 right and then by special permit. In 2004 we happened to
8 add a Table of Uses. So in the text of the zoning
9 regulations of 2004, there was discussion about a race
10 track; but if you looked in the Table of Uses, it wasn't
11 allowed anywhere. Although it did have the same hours of
12 operation.

13 The next one is the 2008 zoning regulations.
14 And the 2008 zoning regulations are very similar. They
15 have the same no races shall be conducted except -- on
16 the track except as permitted by court order dated
17 5/12/59. Same language as from 1985. But in the Table
18 of Uses it does say that the race track is allowed by
19 special permit.

20 My understanding is that the current
21 regulations, we have a Table of Uses, but the race track
22 is not listed in the Table of Uses. I think that was
23 inadvertent. It was there in the previous regulation
24 that the race track was allowed by special permit. And
25 it was allowed in 2005. So one of the things we are

1 proposing is to put back in the Table of Uses that race
2 track is allowed by special permit. So I will -- with
3 these -- I have a couple extra copies if you would like
4 to look at these and I will give these to the clerk for
5 the record.

6 MR. KLEMENS: We are going to enter two
7 additional letters that are left here. We will now enter
8 these regulations, I guess, '59 -- Which is the order?

9 MR. ANDRES: This is --

10 MR. KLEMENS: '85. This is '59. What's this?

11 MR. ANDRES: That's 2004 and that's 2008.

12 MR. KLEMENS: Okay.

13 MR. ANDRES: Start chronological.

14 MR. KLEMENS: So 839. 840 and 841. Thank you.

15 Okay. Having gone through that administrative
16 -- various administrative matters, I'm now going to open
17 it up for the Lime Rock Citizens Council, reversing the
18 order. They will have ten minutes to begin their
19 presentation, please. Starting --

20 MR. HOLLISTER: Is the microphone on?

21 MR. KLEMENS: It should be.

22 MS. BRUSIE: It was working.

23 MR. HOLLISTER: Is this working?

24 MR. KLEMENS: I guess you're going to have to
25 take this mike, please.

1 This is another exhibit. This is Exhibit No.
2 842. Is that something else you're giving us?

3 MR. CONNOR: Yes, sir. It's -- this is the
4 original. If you are okay with it as is. That's fine.

5 MR. KLEMENS: It's contained in what? That?

6 MR. CONNOR: Yes.

7 MR. KLEMENS: No, we don't need it.

8 MR. CONNOR: Fine. Thank you.

9 MR. KLEMENS: Mr. Hollister, would you like to
10 start, please.

11 MR. HOLLISTER: Good evening Mr. Chairman and
12 Commissioners. I'm Attorney Tim Hollister from Hartford.
13 The first thing I actually would like to do,
14 Mr. Chairman, is to yield the floor for this reason:
15 Representing the Lime Rock Citizens Council, but
16 Mr. Connor, planner, and Ms. Wolf, who is part of the
17 leadership of the council, and I have put together a
18 succinct and integrated 30 minute presentation and I
19 really think the Commission will be benefitted by hearing
20 it uninterrupted. So what would like to do with your
21 permission is yield the floor at this time, let you go to
22 the sign up sheet, the public; and when all that is done,
23 we come back and make our presentation soup to nuts in
24 less than 30 minutes. We would like to do that without
25 interruption if you please.

1 MR. KLEMENS: That's fine, Mr. Hollister. The
2 next ten minutes is reserved for Lime Rock Park.

3 Mr. Robertson, you have to use --

4 MR. ROBERTSON: Thank you. Good evening
5 Mr. Chairman, members of the Commission, ladies and
6 gentlemen. I would like to use this ten minute
7 opportunity really to answer the three questions that
8 Attorney Andres submitted to me. And the answer consists
9 of a general answer and then three more specific answers.

10 The general answer is this: You put into
11 evidence four sets of regulations but you neglected to
12 put in the set of regulations that I think controls the
13 legal issues involved in this situation. To understand
14 that, we're going to go through a three step process of
15 zoning regulations which get into some of the unique
16 aspects of zoning law. But please bear with me.

17 Step number one is the track was up and running
18 before zoning was enacted in this town. And we put in
19 evidence to that. In 1959 two things happened. One,
20 zoning came in generally into this town; and secondly,
21 this Commission in 1959 established a rural enterprise
22 district and promulgated very specific regulations about
23 what was to be done in that rural enterpraise district.
24 What governs this are the 1959 zoning regulations, not
25 the regulations that came many years later.

1 So the first exhibit that I want to put in is a
2 copy of Section 8 of the 1959 regulations. I think we
3 all have a copy of that. Section 8 pertains to what is a
4 permitted use in this rural enterprise zone in 1959.
5 When we say permitted use, this is a use that is
6 permitted as a matter of right. It's very, very
7 important in zoning law, as we get into some existing
8 uses, nonconforming uses, there are a lot of terms being
9 thrown around here. But this track is operating, as
10 Section 8 is titled, uses permitted in this district.

11 Now if you go to second page and go to Section
12 8.1.17 of the zoning regulations of 1959 of the town
13 establishing this district, it provides that a use
14 permitted as a matter of right is a track for racing
15 motor vehicles. It goes on for racing, for automotive
16 education, for research and safety, and so on and so
17 forth.

18 From 1959, the Lime Rock Park has been a
19 permitted, as a matter of right, use in this area.
20 That's why at no time in the last 50 years or so has
21 there ever been a request for a special permit. It's a
22 permit as a matter of right.

23 Now let me just go through a couple more steps.
24 The permitted as a matter of right nature of that was
25 referred to in a series of Zoning Commission reports and

1 studies; and I will put in as another exhibit the
2 planning meeting of April 19th of 2011 in which it is
3 described as a use permitted under the zoning
4 regulations.

5 That means that this track is permitted as a
6 matter of right to operate a track in this district. If
7 another track came in, then perhaps you could get some
8 sort of a non-conforming use out of it, but not this
9 track.

10 There's another aspect to the 1959 regulations.
11 If you go back to page 2, remember this is 1959. The
12 statute of the State of Connecticut in which the General
13 Assembly and the governor signed, a law, saying that race
14 tracks can have racing seven days a week. That's the
15 state law. It was passed in 1935. That's the law that
16 was on the books when this Commission and this town
17 enacted the enterprise zone. So if you look at 8.1.17.1,
18 it says -- this Commission says, no races shall be
19 conducted on any such track except during such hours as
20 are permitted by statute. And the statute says racing
21 tracks can run races seven days week; and the only
22 exception is Sunday morning unless the legislative body
23 wants to grant a longer period.

24 So the answers to your questions, Mr. Andres,
25 are as to this client and this operator, this is a

1 back to the other party?

2 MR. KLEMENS: Yes, you can. You can. And if
3 you wish, you can ask questions of other members. But
4 they have to be directed to the Chair. If you have
5 someone in the public you want a clarification, you
6 direct that through the Chair.

7 MR. FLINT: Thank you.

8 MR. KLEMENS: All right.

9 MR. HIGGINS: I assume you do that at the time
10 of speaking?

11 MR. KLEMENS: If you want clarification if
12 there's something -- yes. I think at this point I think
13 we would like to move this along and get answers for the
14 Commission.

15 So the first person on my list is Nick Gordon
16 and going to be followed by Ernest Steubesand. So
17 Mr. Steubesand, maybe you can also be ready after
18 Mr. Gordon.

19 MR. GORDON: Mr. Chairman, may I start out by
20 saying that if we weren't here, we could all be home
21 listening to a music broadcast on WHDE.

22 Music Mountain's position regarding any changes
23 of the regulations through operations of Lime Rock race
24 track are very simple. We're not concerned with whether
25 the track is regulated by the Planning & Zoning

1 Commission or by the Court as it has been since 1959, as
2 long as the regulations are enforced and as long as there
3 is continued prohibition against extended racing on
4 Saturday or at all on Sundays.

5 Our concern remains that noise of racing cars
6 is so overpowering and continuous at Music Mountain and
7 into Gordon Hall that any sound recording is absolutely
8 impossible. Music Mountain is a not-for-profit
9 institution now having just completed it's 86th season.
10 It is the oldest continuing summer chamber music festival
11 in the United States and was the first serious arts
12 institution in this part of Connecticut. The Hartford
13 Courant refers to Music Mountain as the capital of the
14 summer music universe.

15 "The New Yorker" describes Music Mountain as a
16 summer shrine of the string quartet. While the audience
17 that comes to Music Mountain each summer is significant,
18 growing, and, most importantly, provides the financial
19 support that permits Music Mountain to operate, a major
20 part of our audience for more than 41 years has been our
21 radio audience which is now dramatically increased by the
22 Internet and such sites as YouTube. The last time we
23 estimated our radio audience, five years ago, we found
24 that each of the chamber music concerts had between 300
25 and 400,000 listeners. Some say it's just like our very

1 own HDD here (ph.) carrying Music Mountain two times a
2 week all year long with a different concert each
3 broadcast.

4 Because of the many years we have been
5 broadcasting, we are also able to offer all radio
6 stations who want it a regular weekly series that they
7 can broadcast all year, not just for the 16 or 18 weeks
8 of our actual season. When we add the Internet to this
9 with sites like InstantEncore and YouYouTube, our numbers
10 increase dramatically. The Music Mountain concerts have
11 been listened to on InstantEncore, as of last week 72,321
12 times. On six of the seven continents. Antarctica is
13 the one exception.

14 On YouTube, Music Mountain concerts have been
15 listened to and viewed 261,717 times. An interesting
16 sidelight that --

17 MR. KLEMENS: You are out of time, sir. You
18 are out of time, sir.

19 MR. GORDON: Can I have another 30 or 40
20 seconds?

21 MR. KLEMENS: In fairness, you can come back
22 afterward, but I think in fairness to everyone --

23 MR. GORDON: I will submit this in writing to
24 you.

25 MR. KLEMENS: That will be greatly appreciated.

1 not least, remember that all of the above in noise
2 ordinance does not take away the ability for the
3 community to claim private nuisance and have it stopped
4 which is being in the process of being done now in
5 Palmer.

6 MR. KLEMENS: Thank you.

7 Questions, any member of the Commission? Let's
8 move to Douglas Howes. That's going to be followed by
9 James or Jared -- 29 Chimney Rock Road, Kent,
10 Connecticut. I can't read his name.

11 A GENTLEMAN: That's me.

12 MR. KLEMENS: You will be next.

13 MR. HOWES: I'm Douglas Howes, h-o-w-e-s. I'm
14 here to talk to the P&Z Commission about the two Lime
15 Rock Citizen Council letters, one dated July 19th and the
16 other dated October 9th.

17 They have been previously submitted to the
18 record, so I won't read them and take time to do that as
19 you can do so when you review all the information you
20 have.

21 The signatures on these letters are from
22 concerned residents, neighbors, tax payers, second home
23 owners, church members, small business owners, local
24 Salisbury people. Also, some are from adjacent towns
25 affected by the traffic and noise generated by the track.

1 In addition to the signatures on those letters,
2 we have received many online additional signatures on our
3 web site. It is important for you to know that the total
4 number of the signatures on these two letters is over 415
5 people. These are the people who value the sanctity of
6 one quiet day a week to worship, to enjoy their property,
7 to maintain their property values, and the status quo
8 that we have enjoyed for decades.

9 I urge you to weigh the importance of these
10 local people when you vote on the proposed zoning
11 measures in front of you. I want to thank you all for
12 over five years of huge efforts that have been undertaken
13 to update these zoning regulations and I urge you to vote
14 in favor of them. Thank you.

15 MR. KLEMENS: Any questions from the
16 Commission?

17 Okay, gentlemen. Please spell your name for
18 the record.

19 MR. ACHARD: Sure. It's James A--

20 MR. KLEMENS: You need to speak up there. I
21 will announce the next person. The next one will be
22 Robert Douglas.

23 MR. ACHARD: I'm James Achard, Achard. I live
24 in Kent, Connecticut. The reason I'm here is I'm, among
25 other things, a mechanical engineer, second generation.

1 adopt these regulations. One, going to court with
2 lawyers, I know, is very expensive. Usually coming here
3 is not. Usually somebody can come to this Commission
4 without a lawyer and state their concerns. The church
5 can't afford to keep going to court, neither can the
6 people who live in Lime Rock.

7 Number two, this Commission is in far better
8 position to weigh the concerns of the track and the
9 community than any judge sitting in Litchfield.

10 Number three, as counsel for the Lime Rock
11 Citizens Council will set forth, a Planning & Zoning
12 Commission is by Connecticut law the appropriate forum
13 for these issues. Not a court. We have a very strange
14 anomaly here where a court seems to be doing what a
15 Planning & Zoning Commission should.

16 Now why am I talking? I'm talking about of the
17 impact on my church. Sunday mornings. Paragraph 4 of
18 the track's proposed order seeks permission for 20
19 Sundays of, I quote, muffled activity on the upper area
20 between 9 a.m. and 6 p.m. "Activity" is a big word.
21 Please remember there's a small paved track in the upper
22 area. Couple any sort of practice there with increased
23 traffic on 112 and the use of the track's loud speakers,
24 and the conduct of Sunday morning worship in my church
25 will be so frequently interrupted by noise as to become

1 difficult if not impossible.

2 Sunday afternoons. Sunday is now the only day
3 we can be sure that it will be quiet enough in the
4 afternoon to conduct weddings and funerals. With one
5 guaranteed Sunday of unmuffled racing all day, we lose
6 one Sunday for anything. And please note this, since a
7 second Sunday of unmuffled racing remains a constant
8 possibility, dependent only on the weather the preceding
9 day, we will never be able to schedule a wedding or a
10 funeral on a Sunday afternoon.

11 Once upon a time many years ago we could call
12 the track and ask for 20 minutes or so of quiet so we can
13 marry a couple or bury someone, and we would get it. Not
14 now. Not very long ago such a request was made to the
15 track for a funeral on a day other than Sunday. We were
16 told something like this, said without any irony at all:
17 The track schedule is set a year in advance. So if you
18 want to do that, you need to let us know ahead of time.

19 Dr. Klemens and Commissioners, I hope you see
20 why we need you. Thank you.

21 MR. KLEMENS: Thank you. Very well timed.

22 Okay. Michael Nachwalter followed by M.E.
23 Freeman followed by Lisa Keller followed by Janet Manko.

24 MR. NACHWALTER: Good evening. My name is Mike
25 Nachwalteir. I live on Brinton Hill in Lakeville. Thank

1 full of a few other characters. So with that said, I
2 would like to go on record as saying the Lime Rock
3 Cemetery Improvement Association voted in an emergency
4 meeting to support the zoning regulations that are hereby
5 being proposed. Thank you.

6 MR. KLEMENS: Janet Manko.

7 She is not going to speak.

8 George Elling from Falls Village and Erica
9 Charles Joncyk from Falls Village.

10 A GENTLEMAN: We do not wish to speak.

11 MR. KLEMENS: Neither of you wish to speak?
12 George Elling, Erica do not wish to speak. Jerry Jamin
13 from Sugar Hill Road followed by Claudia Nalesnik from
14 Sugar Hill Road.

15 A WOMAN: I don't wish to speak.

16 MR. KLEMENS: Okay. Then it will be Bill
17 Gelles from Chappaqua, New York, will be next.

18 MR. JAMIN: Hi, my name is Jerry Jamin from
19 Sugar Hill Road. I guess I divest myself of any sense of
20 impartiality. We understand that there are highly
21 technical issues and legal issues and almost nothing that
22 we say will address that. Not nothing that we as an
23 audience can address that because it's highly technical.
24 I just want to register the sense of the community, if
25 you have to balance all these things out on life styles,

1 traffic generated by the course we should expect to
2 receive 25 percent less per acre than comparable property
3 would receive if not -- that is outside the reach of the
4 sound waves.

5 So I think that's an important point for
6 consideration; because I think it's clear that the
7 additional traffic, the additional noise would result in
8 greater depreciation of the people within ear shot
9 [Verbatim]. I don't know if Lime Rock corporation would
10 indemnify people against such losses nor can I guess what
11 fun tort lawyers may have as a result. Thank you.

12 MR. KLEMENS: Victor Germack. And after Victor
13 Germack will be followed by Peter Wolf.

14 MR. WOLF: I'll pass.

15 MR. KLEMENS: Mr. Wolf passes.

16 MR. GERMACK: Thank you, Chairman, and
17 Commissioners. I am -- I just want to make a few simple
18 observations; and I'm a little confused. We have a
19 series of injunctions, court injunctions, stipulations
20 that were agreed to by both parties, Lime Rock community
21 and Lime Rock track; and as a result of those
22 stipulations and agreements which they both -- which both
23 parties agreed to, we now have it in our -- by reference
24 in our zoning regulations. And the Commission, I
25 understand, what you want to do is take out the reference

1 and put it right in the regulations themselves and make
2 some other minor changes. I wholly support that. And it
3 seems to me that both parties have been living with this
4 for over 50 years. Why now? Why the changes? Why are
5 they objecting?

6 Perhaps one reason they are objecting is the
7 elephant in the room, which are the number of changes
8 they want to bring and to have tolled and put on notice
9 and filed notices to that effect with the court in
10 Litchfield. Now that we're not going to consider those
11 things, but we're all aware of what they are. And we're
12 all aware of the incredible amount of traffic and
13 congestion on race day because we live in that community
14 very close to the track on 37 Route 7. So it seems to
15 me, as the speaker who just preceded me, Senator Buckley
16 just put in his recent book "The Principal of
17 Subsidiarity" which is that closest to the community, the
18 decision-making body, should make the decision. And that
19 is the local group which is our zoning and planning
20 Commission. It's your responsibility to make that
21 decision, to put it into writing, to codify it. Let it
22 not go to the court in Litchfield, people who don't know
23 our business, don't know what we're doing here, don't
24 know the affect it has on our community, on the traffic,
25 the zoning, the problems, the noise, and the security

1 issues that go all with it. So it's up to you. We
2 depend upon you, and I want to thank you for all of your
3 efforts that you put into place.

4 MR. KLEMENS: Thank you. That exhausts the
5 list of people that wish to speak.

6 Are there anybody else, member of the public,
7 that wishes to speak for three minutes?

8 Yes, go ahead. I would like to get public
9 comments. State your name for the record and spell it,
10 please, for the court reporter.

11 MS. ANDERSON: My name is Wendy Anderson,
12 A-n-d-e-r-s-o-n.

13 We're lucky we live in a very beautiful part of
14 the world. I don't want to see it spoiled. I've had a
15 house here since 1978 and I've seen it change. It seems
16 to me that if the race track becomes more and more
17 successful, this area is going to get rather depressing.
18 We're not going to want to go out of our houses in the
19 summer because there are too many cars, too many people,
20 and there could be possible crime. Many I'm just saying
21 it doesn't seem fair that one organization can change it
22 all for us.

23 I understand that the property appraisal is
24 around about 1.7 billion for the Town of Salisbury. And
25 the race track is probably worth about maybe 12 million.

1 case that over the last four or five decades, the race
2 track has negotiated in good faith with all of you over
3 all of those years for regulations that they have been
4 abided by. Does that not tacitly acknowledge the
5 legitimacy of this committee to have a say in what goes
6 on at that park. It seems to me -- I'm not a lawyer, so
7 I don't know that would have legal precedent, but it
8 seems to me if they can forward their case, argue that
9 they should be talking to you about this and negotiating,
10 why suddenly does that not have legal weight in it's own
11 right. Thank you.

12 MR. KLEMENS: Thank you. On that note. I
13 think it's time to turn over to Lime Rock committee --
14 Lime Rock Citizens Council, excuse me, for their
15 presentation.

16 MR. HOLLISTER: Thank you, Chairman Klemens,
17 commissioners. As mentioned earlier, I'm Attorney Tim
18 Hollister from Hartford. I would say that in my
19 presentation I always strive to have my comments go from
20 my lips to God's ears, so I want to thank you for this
21 venue. I think it will facilitate that.

22 The Council's membership includes Trinity
23 Episcopal Church, the Lime Rock Cemetery association,
24 both of about Lime Rock Park, Music Mountain and about 250
25 Salisbury property owners and 400 total individuals. And

1 I will submit at the end for the record I have an aerial
2 photograph showing the relative location of the Music
3 Mountain, the cemetery and the church. I know you know
4 where they are, but as Mr. Andres mentioned, if we get to
5 a higher place with this, we want to be able to identify
6 those locations.

7 You should all have in front of you a copy of
8 the bound version of the materials that I e-mailed, PDF'd
9 to Ms. Brusie this morning. I provided to Attorney
10 Robertson a copy. Let me just review the tabs.

11 The first is an outline of what I'm going to
12 tell you tonight. I'm not going to do the whole outline
13 but you have the whole outline. Mr. Connor's report
14 is -- which he will give -- is tab 2. Tab 3 is an
15 affidavit about property ownership near the track which I
16 will refer to in my remarks. Tab 4 is a summary of the
17 changes, the modifications to the injunction that Lime
18 Rock Park has proposed which form a very important
19 backdrop of the position of the Council.

20 Tab 5 is informational in a sense that it's a
21 copy of the motions -- the opposition to motions to Lime
22 Rock Park that the Citizen's Counsel has been forced to
23 file. Just to give you some sense of why we are asking
24 to transition this from the the court system to local
25 regulation; and then there's a copy of my C.V. at the

1 end.

2 In summary, the Council, number one, supports
3 the proposed zoning regulation amendment both as a way to
4 make the rules that govern Lime Rock Park public
5 information which is a very important purpose. And more
6 importantly, to replace the current private party
7 injunctions and stipulations with enforceable municipale
8 regulation. We talked about codifying the terms of the
9 injunction; but in my view, it's the enforceable
10 municipale process that is more important. And I'll come
11 to that.

12 I'm going to give you some suggested
13 improvements to the proposed text of the amendments. I
14 want to make it clear that in general, the Citizens
15 Council does not oppose continued operation of Lime Rock
16 Park in compliance with the existing restrictions. But
17 it does oppose the park's attempt to expand the
18 operations by asking a Superior Court judge to modify the
19 existing private lawsuit injunction thereby by-passing
20 this Commission and the town. So in other words the
21 proposed zoning regulations are not only fair and
22 equitable, which I think is a theme that the speaker just
23 before me sounded, but they are a necessary legal means
24 for the town to oversee and regulate a major land use
25 within it's borders.

1 Now it's important to understand that the need
2 for the Commission's proposal, the zoning text amendment,
3 arises directly from what I will call the current
4 anomalous upside-down legal situation that we have here.
5 As has been said, the park is controlled today by the
6 terms of an injunction that results from this lawsuit
7 between the track owner and private citizens began in the
8 late 1950s and that's because of two circumstances. The
9 track began operating before there was zoning in the town
10 of Salisbury and thus the first lawsuit was necessarily
11 between private parties and the track owner because it
12 preceded zoning. But more importantly, to date, the town
13 of Salisbury and the citizenry have allowed Lime Rock
14 Park to keep operating without a zoning special permit
15 and without a site plan approval because the park has
16 generally complied, not totally, but generally complied
17 with the terms of the injunction.

18 The problem now is -- and you've heard about
19 this, is that the park now wants to substantially modify
20 the injunction and expand it's operations; and that is
21 the trigger, if you will, that is put before you, front
22 and center, the issue of whether the town, through it's
23 Planning & Zoning Commission, will step up to it's
24 obligation to supervise this major land use activity.

25 Now it is very important and widely

1 misunderstood that Lime Rock Park is today a
2 non-conforming use governed by Section 500 of the
3 Salisbury zoning regulations. Its non-conforming status
4 was expressly identified, acknowledged by Attorney
5 Robertson at the hearing on September 8th. With all due
6 respect, he said the opposite tonight. He claimed that
7 it's a permitted use. It cannot be both. It is stated
8 in several Superior Court stipulations and opinions that
9 it is a non-conforming use. And the park is
10 non-conforming because even though -- this is in direct
11 colloquy with Attorney Robertson told you before -- even
12 though a track for racing motor vehicle collision is a
13 use that is listed in the zoning regulations, Lime Rock
14 Park has never applied for and has never received either
15 a special permit or a site plan approval for track and
16 racing operations. It has chosen, chosen to continue
17 operating under the terms of the Superior Court
18 injunctions and the stipulations. There are reasons for
19 that which I will come back to.

20 Let me also point out that grandfathering,
21 based on auto race in 1959, is completely irrelevant to
22 today's situation and the amendments before you. I would
23 agree that Lime Rock Park has this basic grandfathered
24 right to conduct auto racing. But its present scope of
25 operations and certainly it's desire to expand are not

1 grandfathered or vested in any way because we are now
2 several generations removed from what existed in 1959.
3 Which is indeed a point that they have made several
4 times. And notably, any claim that the Lime Rock Park
5 may have had in the past to Sunday racing being
6 grandfathered has been long since abandoned by their own
7 agreement to accept a ban on Sunday racing.

8 Now it's important to understand that a
9 non-conforming use is one that violates the existing
10 zoning regulations, is intended actually -- and this is
11 right in your regulations -- to cease operations at the
12 end of it's useful life. But the most important thing is
13 a non-conforming use can be maintained and repaired, it
14 cannot be expanded or modified. So it's kind of -- talk
15 about anomalies -- the track is asking the Court to allow
16 it to expand and to modify, but that is something it
17 could not get from this Commission because of it's
18 non-conforming status. In addition, I would point out
19 that in the court cases to date, the park has been
20 adjudicated to be a noise nuisance. That's why they have
21 restrictions on their operations in the first place.

22 So in summary, as a matter of land use law, the
23 park is a non-conforming use that violates the current
24 zoning regulations. It is a noise nuisance. It is
25 controlled by an injunction entered in the Litchfield

1 court between the track and private parties, not the
2 town, not the P&Z; and as a result, and this is kind of
3 the key to the process issue, the burden of monitoring
4 and enforcing the current rules and reacting to proposed
5 expansions as we see now so placed on private parties to
6 the court orders, many of whom have passed away or are
7 organizations that have gone out of existence.

8 So the operation of Lime Rock Park as a matter
9 of Connecticut land use law, municipale responsibility and
10 fairness to the impacted property owners in the vicinity
11 of the track needs to be brought under the control of the
12 town through it's zoning regulations and specifically the
13 amendment before you.

14 Now let me comment on the -- as a background to
15 the realization on the park's pending motions in
16 Litchfield Superior Court. No question they have
17 proposed a substantial expansion of their operations and
18 that's summarized in tab 4 of the package that I gave you
19 tonight. The expansion is much more than one Sunday per
20 year. And they're claiming that its one Sunday is based
21 on the assumption that a mufflered racing does not cause
22 noise or traffic impacts which of course we dispute.
23 But the point is that Lime Rock's motions are essentially
24 a procedural end run on the impacted property owners and
25 this Commission. The proposed motions are set up to give

1 notice only to those private parties to the previous
2 injunctions, last entered in 1988, who are still living
3 in the area or organizations still in existence, not the
4 town, the not the PZC, NOT the 160 residential property
5 owners who live within 1.5 miles of the track. As
6 you've heard, the request is that a Superior Court judge
7 make the decision.

8 But on top of that, the park is asserting that
9 the injunction should modified based on two grounds only.
10 One is changes in auto racing since 1988 and the claim
11 that the track is not financially viable without expanded
12 operations.

13 Under Connecticut law -- and again I'm echoing
14 the previous speaker -- the PZC is supposed to determine
15 allowable land uses after which our courts may review
16 that decision. But Lime Rock is seeking the court
17 approval to expand operations without the PZC having any
18 role to consider noise, traffic, property values, impacts
19 on business, environmental and enforcement of
20 expansion.

21 Now as to the Council's specific support for
22 the regulation that's before you, I want to point out
23 that Section 221.1, in addition to the Table of Uses,
24 should state that a track for racing motor vehicles is a
25 special permit use. It should state that. That would

1 require the track to become a conforming use, to even be
2 eligible to apply for an expansion or a modification, to
3 come before you for a special permit under the procedures
4 and standards of Section 802 to 804 of your existing
5 regulations. And I would point out that a special permit
6 is the singularly appropriate procedure for regulating an
7 operation like Lime Rock Park. A special permit use is
8 one that is permitted by the zoning regulations but it
9 has such potential impacts that the Commission needs to
10 impose controls including operational controls, including
11 conditions on noise, hours of operation and so forth.

12 But the point, and this is the process point,
13 is that requiring the park to obtain a special permit
14 will mean that its current operation and any proposed
15 expansion in the future will be considered under time
16 tested state legal procedures. Notice to impacted
17 parties, public disclosure, public hearings, PZC
18 consideration of impacts, written standards, a written
19 decision and an appeal right to the court.

20 Now let me just spend a moment -- now I'm on
21 pages 6 going over to page 7 of my outline. I want to
22 make just four specific suggestions about how you might
23 improve your regulation. The first is, as I just
24 mentioned, making it clear that a track for motor
25 vehicles is a special permit use. Not a permitted use.

1 A special permit use. Not just in your Table of Uses,
2 but in the regulation itself. Number two is I would
3 advocate deleting the footnotes that refer to the court
4 injunctions because they imply that the court injunctions
5 are some restraint on your authority as the Planning &
6 Zoning Commission which is legally incorrect.

7 Number 3 is I would ask you to clarify
8 accessory uses. Right now you have the phrase -- this is
9 the bottom of page 7 -- permitted uses incidental to an
10 accessory. Permitted uses are, as Mr. Robertson said, a
11 special category. You don't want to confuse permitted
12 uses with incidental and accessory. Incidental and
13 accessory are those that support a principal or special
14 permit use. I would recommend taking the word
15 "permitted" out of there and adding the language that's
16 in capital letters.

17 And finally, I am told that there have been
18 issues at the track where the track is leased or part of
19 the track is leased to private clubs. And it's been
20 unclear as to who is responsible for enforcement at that
21 point. So I have a suggested 21 -- 221.5 to clarify that
22 situation.

23 In response to the remarks of Attorney
24 Robertson, the proposed regulation is not micro
25 management of an individual business. It is public

1 enforcement and responsibility in place of a private
2 injunction. The proposed regulation is not a regulation
3 of noise. That -- What you can't do is you can't
4 regulate decibel levels, but you absolutely can regulate
5 land use to control the admission of noise. It is the
6 level that is covered by the State. By the way, there
7 seems to be some confusion or some claim that there's no
8 noise regulation in the town of Salisbury. Well there is
9 state statute and there is also a regulation of the
10 Torrington Area Health District. So you have, whether
11 you like it or not, you have an enforceable noise
12 regulation.

13 I will end with some comments in response to
14 Attorney Andres' question, this is what Mr. Robertson
15 addressed at the start of his remarks. The state
16 Statutes 14-164 is sort of a give and take. It's like an
17 old blue law. What it basically says is here are the
18 hours of Sunday racing if the town otherwise allows
19 racing. But in no way, shape, or form does that statute
20 occupy the field or prevent a municipality or this
21 Commission from delving into the regulation of racing.
22 So I think you are not constrained. There's certainly no
23 preemption in that respect.

24 So at this point I'm going to turn it over to
25 Marty Connor who has some comments about the plan of

1 conservation and development.

2 MR. CONNOR: Good evening Commission. My name
3 is Martin Connor. I'm a certified planner with the
4 American Planning Association. And I'm here to speak in
5 favor of you adopting your regulation. And as you folks
6 know, maybe a lot of people in the audience don't know,
7 when you're about to adopt a regulation, you need to
8 speak to your planning and conservation development and
9 show how your proposed regulation relates to the plan.
10 So if I can read into the record my letter to you dated
11 October 19, 2015, as part of your package.

12 Dear members of the Commission: Please be
13 advised that I represent the Lime Rock Citizens Council
14 for the northwest corner. At the time of this writing,
15 the group consists of over 300 individual members and
16 partners such as Music Mountain, Trinity, Lime Rock
17 Church and the Lime Rock Cemetery Improvement
18 Association. At their request, I've reviewed the
19 proposed amendments to the Salisbury zoning regulations
20 Section 221.1 through 4, track for racing motor vehicles
21 and Section 205.2 to 3, Table of Uses. After reviewing
22 the proposed amendments, I've determined that they are
23 consistent with the Town of Salisbury's 2012 plan of
24 conservation and development and with the town of
25 Salisbury's zoning regulations. In particular Article 1,

1 Section 100.2, purposes; Section 100.2a, promoting and
2 protecting the public health, safety, convenience and
3 general welfare of the community; Section 100.2b,
4 conserving and protecting natural resources such as ridge
5 lines, farm lands, wetlands, water courses and other
6 sensitive natural resources and areas; Section 100.2d,
7 conserving the value of buildings and property values and
8 encouraging the most appropriate use of land throughout
9 the town; Section 100.2e, lessening congestion in the
10 streets and securing safety from fire, panic, flood and
11 other dangers. Zoning regulation issues. One, if the
12 proposed amendments are adopted, a new use will be added
13 to the RE rule enterprise zone. Track for racing motor
14 vehicles and activities incidental or accessory to will
15 be listed in new Article 2 Section 221.a. A track for
16 racing motor vehicles will be a special permit use.

17 Currently Lime Rock Park, LLC is a pre-existing
18 non-conforming track for racing motor vehicle use. The
19 citizens of the town of Salisbury have to depend on the
20 Litchfield Superior Court injunctions that have been in
21 place for 50 years for regulation of use. The current
22 use and injunction prohibits racing on Sundays, limits
23 the track's hours of operation including use of loud
24 speakers and loading and unloading of vehicles; limits
25 the number of unmuffled races; prohibits motorcycle

1 racing; and restricts camping in the in field and limit
2 camping-related traffic.

3 New article 2 Section 221.1 through 4
4 incorporates the terms of the previous court injunctions
5 into the zoning regulations. No new or additional
6 restrictions have been added that would prevent Lime Rock
7 Park, LLC from operating its business any differently
8 than it has over the years.

9 Currently as required by Connecticut's General
10 Statutes Section 8-2, the Salisbury zoning regulations do
11 not prohibit the continuance of Lime Rock Park, LLC, as a
12 non-conforming situation. However, the intent of Article
13 5, Section 500.2, continuance of a nonconforming
14 situation, in the regulations is to reduce or eliminate
15 non-conforming situations as quickly as possible. Lime
16 Rock Park, LLC could benefit from changing their status
17 from it's present non-conforming use to a special permit
18 use. With adoption of the proposed amendments, Lime Rock
19 Park, LLC would have the option of filing an application
20 for special permit designation as a track for racing
21 motor vehicles and with them become a special permit use
22 as allowed under the regulations.

23 Rather than going to court for injunctive
24 relief, both Lime Rock Park, LLC and the town of
25 Salisbury would deal in the future with any expansions or

1 changes to the track through the normal Planning & Zoning
2 Commission special permit/site plan application process.
3 This allows for the public input and requires a thorough
4 review by the Planning & Zoning Commission under Article
5 8, site plans and special permits, applications
6 requirements, standards and procedures.

7 Future improvements that Lime Rock Park, LLC
8 might undertake on their property as a special permit use
9 would require environmental review and the implementation
10 of low impact development techniques. Lime Rock Park or
11 Lime Rock itself is an historic district and is listed in
12 the National Registrar of Historic Places. Site plan
13 review under special permit uses can take protection of
14 historic places under consideration.

15 As far as the plan of conservation and
16 development issues. This is why I feel the proposed
17 amendments are consistent with the town of Salisbury's
18 2012 plan and conservation and development. One, the
19 plan states preserve natural resources. Natural
20 resources are the key to the overall character of
21 Salisbury and the quality of life per page 3 of your
22 plan. Two, preserve community character per page 20 of
23 the plan. Protecting the community character is listed
24 as an important goal of the town. Strategies, community
25 character, continue to preserve and enhance the physical

1 character of Salisbury, promote a dark skies approach to
2 land use and development per pages 23 to 24.

3 Four, things we want to protect. Preserve
4 community character per page 51. The proposed amendments
5 will help protect the neighborhood character. Five, how
6 we want to guide development. Enhance village centers
7 per page 52 of the plan. Clearly creating the track for
8 racing motor vehicles regulation as a special permit use
9 for the village of Lime Rock helps guide development.

10 In conclusion, it's my opinion that the
11 proposed amendment should be approved by the Planning &
12 Zoning Commission as they are in keeping with the
13 purposes of the Town of Salisbury's zoning regulations
14 and are definitely consistent with the Town of
15 Salisbury's 2012 plan of conservation and development.
16 Thank you.

17 MS. WOLF: Good evening. My name is Sarah
18 Wolf. I live at 45 White Hollow Road. I'm speaking
19 tonight on behalf of the Lime Rock Citizens Council. It
20 is my honor to be speaking again tonight on behalf of the
21 LRCC which is now over 400 members strong and growing
22 every day. Over 250 of our members live in Lakeville or
23 own property in Lakeville and Salisbury and many more
24 live or own property in surrounding towns.

25 Since this hearing was opened on September 8th,

1 roughly six weeks ago, hundreds of residents and
2 concerned neighbors have joined our organization because
3 there is a genuine and well founded concern in this
4 community about the drastic changes the track is seeking
5 to implement; and there is a genuine and well founded
6 concern that those of us who will be most affected and
7 potentially damaged by the track's expansion will not
8 have a voice in the process.

9 The issue of process is really why we are here
10 tonight. We are here tonight because the members of the
11 LRCC believe that the restrictions issued through a
12 private injunction, restrictions that we have relied on
13 for half a century, should be made public, should be made
14 accessible, and should be enforceable.

15 We are here tonight to say that when a private
16 business that sits in a residential neighborhood, a
17 business with vastly greater resources than all of it's
18 residential neighbors combined, decides that it would
19 like to expand its business to the detriment of the
20 community, the community should have a voice in the
21 decision-making process. And the changes sought by that
22 private business should be considered and vetted in a
23 public forum like this one, not by a handful of private
24 parties behind closed doors of a courtroom.

25 This is not a private matter. For many years

1 there has been a fine balance in Lime Rock between the
2 community and the track. The residents of Lime Rock put
3 up with lot of noise, traffic and pollution that the rest
4 of Salisbury does not have to deal with, because we
5 recognize that Mr. Barber has right to conduct his
6 business.

7 We may want there to be more restrictions. He
8 may want there to be less restrictions. But the bottom
9 line is that there is a compromise in place that balances
10 the interests of both parties. And there must be a
11 compromise because Mr. Barber's right to conduct his
12 business does not trump the rights of the residents and
13 neighbors of Lime Rock. Mr. Barber is no more entitled
14 to earn profit than we are entitled to realize the fair
15 market value of our property or to enjoy our property,
16 our church, and our community institutions.

17 It is true, as many people remind us, that
18 those of us who own property in or near Lime Rock
19 purchased our property knowing that the track was there
20 and knowing that the track's operations would have an
21 impact on our property values and on our ability to
22 peacefully enjoy our property. It is also true, however,
23 that when we bought our properties, we did so knowing
24 that the track was subject to restrictions. Limits on
25 Sunday racing. Limits on unmuffled racing. Limits on

1 camping. Limits on hours of operation. Limits that --
2 restrictions that limit noise and traffic.

3 We bought our property in reliance on these
4 restrictions. And when Skip Barber bought the track, he
5 made his investment knowing full well that it carried
6 certain restrictions that were in place to protect the
7 community.

8 It is Mr. Barber who is trying to change the
9 rules in the middle of the game, not the LRCC. The
10 proposed Planning & Zoning -- the proposal the Planning &
11 Zoning Commission is considering tonight is an effort to
12 protect and preserve the fine balance in Lime Rock. It
13 is a thoughtful and carefully crafted proposal that seeks
14 to ensure that the residents and the track can continue
15 to co-exist as we always have. And it is a proposal that
16 ultimately seeks to bring any disruption to that fine
17 balance into the public purview. It is a proposal to
18 make any conversation about change or expansion a public
19 conversation not a private one dominated by the party who
20 can afford to hire the best lawyer.

21 The fact is that the drastic roll-back of
22 restrictions sought by the track will do irreparable harm
23 to the community that has embraced Mr. Barber and his
24 track for decades. And the reality is Mr. Barber and his
25 legal team know full well that what they are asking for

1 is a radical disruption to the status quo. They know
2 that what they're asking for is excessive, legally
3 indefensible, and ultimately damaging to the community.

4 The bottom line is that whatever has prompted
5 Mr. Barber to upset the status quo, the welfare of our
6 community should not hang on the whims and desires of a
7 single business owner and it should not be decided as if
8 it is a dispute between private parties because it is
9 not. There must be a framework in place to ensure that
10 the interests of the community as well as the track are
11 fully represented and fairly considered and that
12 restrictions are properly enforced.

13 And I do want to touch briefly than the issue
14 of enforcement because this is really a significant issue
15 of concern for our members. In Attorney Robertson's
16 position paper he illustrates perfectly the problem we as
17 a community currently face with the issue of enforcement.
18 In his paper, he states, quote, there is no evidence that
19 the proposed restrictions are necessary to achieve any
20 legitimate planning goal such as the protection of health
21 or safety. The record on this issue is firmly
22 established. The PZC's files from the past five years
23 reflect no record of complaints. Trust me, we
24 complained.

25 Complaints about pollution, noise, traffic,

1 speeding and dangerous driving conditions regularly are
2 made to the Torrington Area Health Department, to the
3 Department of Environmental Protection, to the Canaan
4 barracks, to the track itself. Complaints are made to
5 just about anyone who will listen. The fact that the PZC
6 is not receiving these complaints is the problem. The
7 PZC should be receiving these complaints because it is
8 the entity best designed to and best empowered to monitor
9 and enforce land use including operations like the track.

10 Right now the community has no accessible forum
11 that will receive our complaints and we have no remedy
12 when the track is in violation. Our only option is to
13 hire a lawyer and to go to court to try and enforce the
14 terms of the injunctions. And that is not a burden we
15 should have to bear.

16 In closing, I would like to thank the Planning
17 & Zoning commissioners. If this has been a lot of work
18 for us, I can only imagine how much work it has been for
19 all of you. I would also like to thank all of our
20 members and supporters because it really has been
21 Herculean effort over the last two months to get us where
22 we are today. None of us chose this fight. We have been
23 put on the defensive. But there is a silver lining in
24 the way that we as a community have risen and rallied for
25 this cause. Strangers who are now friends have dedicated

1 their time, money, and support because we value our
2 community. We value it's beauty and it's peace and the
3 enjoyment it affords us. We ask that the Planning &
4 Zoning Commission pass the proposed amendments to ensure
5 our community has the protections it deserves. Thank you
6 very much.

7 MR. HOLLISTER: Thank you, Mr. Chairman for
8 letting us make that presentation. I do have this
9 exhibit. This isn't telling you anything you don't know,
10 but I will give this to Ms. Bruisie for the record. It's
11 a Google map aerial shot of the park, the Trinity Church,
12 Lime Rock Cemetery and Music Mountain locations
13 indicated.

14 MR. KLEMENS: It may be entered in the record.
15 Thank you. I have a couple questions.

16 I was puzzled by the statement that the PZC has
17 not -- nothing in our records concerning complaints. I
18 mean I've been chairman I think for since 2009 or '10. I
19 remember workshops. I remember many, many times people
20 from Lime Rock coming to us with issues. So I don't
21 quite understand -- and maybe Ms. Robinson can illuminate
22 this, why you found nothing in our records to reflect
23 that. Including the one workshop we had which was all
24 about noise. I don't understand really why the record --
25 so to answer your question, we have received many

Connecticut General Statutes Annotated Title 22a. Environmental Protection (Refs & Annos) Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-67

§ 22a-67. State policy regarding noise

Currentness

(a) The legislature finds and declares that: (1) Excessive noise is a serious hazard to the health, welfare and quality of life of the citizens of the state of Connecticut; (2) exposure to certain levels of noise can result in physiological, psychological and economic damage; (3) a substantial body of science and technology exists by which excessive noise may be substantially abated; (4) the primary responsibility for control of noise rests with the state and the political subdivisions thereof; (5) each person has a right to an environment free from noise that may jeopardize his health, safety or welfare.

(b) The policy of the state is to promote an environment free from noise that jeopardizes the health and welfare of the citizens of the state of Connecticut. To that end, the purpose of this chapter is to establish a means for effective coordination of research and activities in noise control, to authorize the establishment of state noise emission standards and the enforcement of such standards, and to provide information to the public respecting noise pollution.

Credits

(1974, P.A. 74-328, § 1, eff. July 1, 1974.)

C. G. S. A. § 22a-67, CT ST § 22a-67

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

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Connecticut General Statutes Annotated Title 22a. Environmental Protection (Refs & Annos) Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-68

§ 22a-68. Definitions

Effective: October 1, 2014
Currentness

As used in this chapter:

- (a) "Commissioner" means the Commissioner of Energy and Environmental Protection or his designated agent as defined in subsection (a) of section 22a-2.
- (b) "Department" means the Department of Energy and Environmental Protection.
- (c) "Local government" means any metropolitan district, town, consolidated town and borough, city, borough, village or any subdivision thereof.
- (d) "Person" means "person" as defined in subsection (b) of section 22a-2.
- (e) "Noise" means the intensity, frequency, duration and character of sounds from a source or number of sources, and includes vibrations of subaudible or superaudible frequency.
- (f) "Ambient noise" or "environmental noise" means noise from all stationary sources.
- (g) "Stationary noise source" means any building, structure, facility or installation which emits or may emit noise, beyond the property line on which such source is located, except any on-site recreational or sporting activity which is sanctioned by the state or local government or farming equipment or farming activity. A recreational or sporting activity shall be deemed sanctioned by a local government if (1) the activity has received all approvals or permits required by the local zoning authority, (2) a resolution sanctioning the activity has been adopted by the legislative body of the local government, or (3) the activity is owned or operated by the local government.

Credits


(1974, P.A. 74-328, § 2, eff. July 1, 1974; 1989, P.A. 89-277, § 3, eff. June 26, 1989; 2011, P.A. 11-80, § 1, eff. July 1, 2011; 2014, P.A. 14-122, § 133.)

C. G. S. A. § 22a-68, CT ST § 22a-68

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Connecticut General Statutes Annotated
Title 22a. Environmental Protection (Refs & Annos)
Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-69

§ 22a-69. State-wide program of noise regulation

Currentness

(a) The commissioner may develop, adopt, maintain and enforce a comprehensive state-wide program of noise regulation which may include, but need not be limited to the following: (1) Controls on environmental noise through the regulation and restriction of the use and operation of any stationary noise source; (2) ambient noise standards for stationary noise sources which in the commissioner's judgment are major sources of noise when measured from beyond the property line of such source and such standards shall be feasible and requisite to protect the public health, safety and welfare; such standards may include, but need not be limited to, adoption by reference of standards or regulations adopted by the administrator of the United States Environmental Protection Agency pursuant to the Noise Control Act of 1972 (P.L. 92-574) or any amendment thereto;¹ (3) consultation with state and local governmental agencies when such agencies adopt and enforce codes, standards and regulations dealing with noise insulation and abatement for any occupancy or class of occupancy; (4) controls on airport and aircraft noise to the extent not preempted by federal law; nor shall the state preempt power of local governments, in their capacity as proprietors of airports or under police powers.

(b) (1) Any regulation promulgated pursuant to this chapter shall be adopted pursuant to chapter 54² and shall be one which, in the judgment of the commissioner, is requisite to protect the public health, safety and welfare, taking into account the magnitude and conditions of use or operation of the stationary noise source involved, alone or in combination with other such sources, the degree of noise reduction achievable through the application of the best available and practical technology, taking into consideration technology which may be available at the time the regulation becomes effective.

(2) Regulations promulgated pursuant to the authority of this chapter may be applicable throughout the state or to such parts or regions thereof specifically designated in such regulations.

(3) The commissioner shall adopt regulations providing for the granting of individual variances from the provisions of this chapter, whenever it is found, upon presentation by the petitioner of adequate proof, that compliance with any provision of this chapter, any regulation promulgated under it or an order of the commissioner would impose an arbitrary or unreasonable hardship.

Credits

(1974, P.A. 74-328, § 4, eff. July 1, 1974; 1991, June Sp.Sess., P.A. 91-10, § 13, eff. Oct. 2, 1991.)

Footnotes

1 42 U.S.C.A. § 4901 et seq.

2 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 22a-69, CT ST § 22a-69

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Connecticut General Statutes Annotated Title 22a. Environmental Protection (Refs & Annos) Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-70

§ 22a-70. Duties and powers of the commissioner

Currentness

In order to carry out the purposes of this chapter, the commissioner may:

- (a) Exercise all powers granted to him under section 22a-6;
- (b) Provide technical assistance to other state agencies and to political subdivisions of this state;
- (c) Conduct programs of public education regarding the causes and effects of noise and means for its abatement and control and encourage the participation of professional, scientific, conservation and other public interest groups in related public information efforts;
- (d) Cooperate with all federal, interstate, state and local governments relating to the control, prevention and abatement of noise;
- (e) Receive and disburse all appropriate funds pertaining to the state's noise control program from private and public sources;
- (f) Appoint such advisory groups and committees as may be necessary to assist in carrying out the state noise control program;
- (g) Investigate complaints, institute and conduct surveys and testing programs, conduct general ambient noise sampling programs, make observations of conditions which may or do cause or affect noise pollution and make tests or other determinations of noise sources and assess the degree of abatement required.

Credits

(1974, P.A. 74-328, § 5, eff. July 1, 1974.)

C. G. S. A. § 22a-70, CT ST § 22a-70

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

Connecticut General Statutes Annotated Title 22a. Environmental Protection (Refs & Annos) Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-71

§ 22a-71. Commissioner's report to Governor and General Assembly

Currentness

The commissioner shall report to the Governor and the General Assembly not later than February 15, 1975, his recommendations for further executive and legislative action. Such recommendations shall include:

- (a) The feasibility of adopting a program of state certification of products determined to be low noise emission products, including products certified by the administrator of the United States Environmental Protection Agency pursuant to Section 15 of the Noise Control Act of 1972 (P.L. 92-574)¹ or any amendment thereto;
- (b) The feasibility of adopting a program establishing labeling requirements which prohibit the sale or offer to sell or the lease or offer to lease of any product, machine or equipment, or class thereof, without notice to the prospective purchaser, lessee or user of the noise levels and characteristics emitted by such product, machine, vehicle or equipment, or its effectiveness in reducing noise, as the case may be. Labeling requirements may be in conformity with federal labeling requirements where applicable;
- (c) Other recommendations for executive and legislative action needed to carry out a state-wide program of noise abatement.

Credits

(1974, P.A. 74-328, § 6, eff. July 1, 1974.)

Footnotes

¹ 42 U.S.C.A. § 4914.

C. G. S. A. § 22a-71, CT ST § 22a-71

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Connecticut General Statutes Annotated Title 22a. Environmental Protection (Refs & Annos) Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-72

§ 22a-72. Cooperation of state agencies, review of regulations

Currentness

(a) State agencies shall, to the fullest extent consistent with their authorities under state law administered by them, carry out the programs within their control in such a manner as to further the policy stated in section 22a-67.

(b) State agencies shall cooperate with the commissioner in a state program of noise regulation developed and maintained under this chapter.

(c) Each department, agency or instrumentality of the executive, legislative and judicial branches of the government of this state, (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result in the emission of noise, shall comply with federal and state requirements respecting control and abatement of environmental noise.

(d) Each state agency shall consult with the commissioner in prescribing standards or regulations respecting noise. If at any time the commissioner has reason to believe that a standard or regulation or any proposed standard or regulation, of any agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Such agency shall complete the requested review and report to the commissioner within such time as the commissioner specifies, but such time specified may not be less than forty-five days from the date the request was made.

Credits

(1974, P.A. 74-328, § 3, eff. July 1, 1974.)

Notes of Decisions (1)

C. G. S. A. § 22a-72, CT ST § 22a-72

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Connecticut General Statutes Annotated

Title 22a. Environmental Protection (Refs & Annos)

Chapter 442. Noise Pollution Control (Refs & Annos)

C.G.S.A. § 22a-73

§ 22a-73. Municipal noise regulation programs; ordinances subject to commissioner's approval

Currentness

(a) To carry out and effectuate the purposes and policies of this chapter it is the public policy of the state to encourage municipal participation by means of regulation of activities causing noise pollution within the territorial limits of the various municipalities. To that end, any municipality may develop and establish a comprehensive program of noise regulation. Such program may include a study of the noise problems resulting from uses and activities within its jurisdiction and its development and adoption of a noise control ordinance.

(b) Any municipality may adopt, amend and enforce a noise control ordinance which may include the following: (1) Noise levels which will not be exceeded in specified zones or other designated areas; (2) designation of a noise control officer and the designation of an existing board or commission, or the establishment of a new board or commission to direct such program; (3) implementation procedures of such program and the relation of such program to other plans within the jurisdiction of the municipality; (4) procedures for assuring compliance with state and federal noise regulations; (5) noise level restrictions applicable to construction activities, including limitation on on-site hours of operation.

(c) No ordinance shall be effective until such ordinance has been approved by the commissioner. No ordinance shall be approved unless it is in conformity with any state noise control plan, including ambient noise standards, adopted pursuant to section 22a-69 or any standards or regulations adopted by the administrator of the United States Environmental Protection Agency pursuant to the Noise Control Act of 1972 (P.L. 92-574) or any amendment thereto.¹ Notwithstanding the provisions of this subsection, any municipality may adopt more stringent noise standards than those adopted by the commissioner, provided such standards are approved by the commissioner.

Credits

(1974, P.A. 74-328, § 7, eff. July 1, 1974.)

Notes of Decisions (1)

Footnotes

¹ 42 U.S.C.A. § 4901 et seq.

C. G. S. A. § 22a-73, CT ST § 22a-73

The statutes and Constitution are current with enactments of the 2016 February Regular Session, the 2016 May Special Session, and the 2016 September Special Session.

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Department of Environmental Protection

Subject

Control of Noise

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§§ 22a-69-1—22a-69-7.4

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TITLE 22a. Environmental Protection

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Control of Noise

Sec. 22a-69-1. Definitions

Sec. 22a-69-1.1. General

(a) **adaptive reuse** means remodeling and conversion of an obsolete or unused building or other structure for alternate uses. For example, older industrial buildings, warehouses, offices, hotels, garages, etc., could be improved and converted for reuse in terms of industrial processes, commercial activities, educational purposes, residential use as apartments, or other purposes.

(b) **aircraft** means any engine-powered device that is used or intended to be used for flight in the air and capable of carrying humans. Aircraft shall include civil, military, general aviation and VTOL/STOL aircraft.

(i) **aircraft, STOL** means any aircraft designed for, and capable of, short takeoff and landing operations.

(ii) **aircraft, VTOL** means any aircraft designed for, and capable of, vertical take-off and landing operations such as, but not limited to, helicopters.

(c) **airport** means an area of land or water that is used, or intended to be used, for the landing and takeoff of aircraft and is licensed by the State of Connecticut Bureau of Aeronautics for such use. "Airport" shall include all buildings and facilities if any. "Airport" shall include any facility used, or intended for use, as a landing and take-off area for VTOL/STOL aircraft, including, but not limited to, heliports.

(d) **ANSI** means the American National Standards Institute or its successor body.

(e) **best practical noise control measures** means noise control devices, technology and procedures which are determined by the Commissioner to be the best practical, taking into consideration the age of the equipment and facilities involved, the process employed, capital expenditures, maintenance cost, technical feasibility, and the engineering aspects of the applicable noise control techniques in relation to the control achieved and the non-noise control environmental impact.

(f) **commissioner** means the Commissioner of the Department of Environmental Protection or his/her designated representative.

(g) **construction** means any, and all, physical activity at a site necessary or incidental to the erection, placement, demolition, assembling, altering, blasting, cleaning, repairing, installing, or equipping of buildings or other structures, public or private highways, roads, premises, parks, utility lines, or other property, and shall include, but not be limited to, land clearing, grading, excavating, filling and paving.

(h) **daytime** means 7:00 a.m. to 10:00 p.m. local time.

(i) **director** means the Director of the Office of Noise Control in the Department of Environmental Protection.

(j) **emergency** means any occurrence involving actual or imminent danger to persons or damage to property which demands immediate action.

(k) **intrusion alarm** means a device with an audible signal which, when activated,

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

§22a-69-1.2

Department of Environmental Protection

indicates intrusion by an unauthorized person. Such alarm may be attached to, or within, any building, structure, property or vehicle.

(l) **ISO** means the International Organization for Standardization, or its successor body.

(m) **lawn care and maintenance equipment** means all engine or motor-powered garden or maintenance tools intended for repetitive use in residential areas, typically capable of being used by a homeowner, and including, but not limited to, lawn mowers, riding tractors, snowblowers, and including equipment intended for infrequent service work in inhabited areas, typically requiring skilled operators, including, but not limited to, chain saws, log chippers or paving rollers.

(n) **nighttime** means 10:00 p.m. to 7:00 a.m. local time.

(o) **noise zone** means an individual unit of land or a group of contiguous parcels under the same ownership as indicated by public land records and, as relates to noise emitters, includes contiguous publicly dedicated street and highway rights-of-way, railroad rights-of-way and waters of the State.

(p) **office of noise control** means the office within the Department of Environmental Protection designated by the Commissioner to develop, administer and enforce the provisions of Chapter 442 of the Connecticut General Statutes.

(q) **OSHA** means the Occupational Safety and Health Act and any amendments thereto or successor regulations administered by the U.S. and Connecticut Departments of Labor or successor bodies.

(r) **person** means any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency, or political or administrative subdivision of the State or other legal entity of any kind.

(s) **public emergency sound signal** means an audible electronic or mechanical siren or signal device attached to an authorized emergency vehicle or within or attached to a building for the purpose of sounding an alarm relating to fire or civil preparedness. Such signal may also be attached to a pole or other structure.

(t) **SAE** means the Society of Automotive Engineers, Inc., or its successor body.

(u) **safety and protective devices** means devices that are designed to be used, and are actually used, for the prevention of the exposure of any person or property to imminent danger, including, but not limited to, unregulated safety relief valves, circuit breakers, protective fuses, back-up alarms required by OSHA or other state or federal safety regulations, horns, whistles or other warning devices associated with pressure buildup.

(v) **site** means the area bounded by the property line on or in which a source of noise exists.

(Effective June 15, 1978)

Sec. 22a-69-1.2. Acoustic terminology and definitions

(a) All acoustical terminology used in these Regulations shall be in conformance with the American National Standards Institute (ANSI), "Acoustical Terminology," contained in publication S1.1 as now exists and as may be hereafter modified. The definitions below

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shall apply if the particular term is not defined in the aforesaid ANSI publication.

(b) **audible range of frequency** means the frequency range 20 Hz to 20,000 Hz which is generally considered to be the normal range of human hearing.

(c) **background noise** means noise which exists at a point as a result of the combination of many distant sources, individually indistinguishable. In statistical terms, it is the level which is exceeded 90% of the time (L_{90}) in which the measurement is taken.

(d) **continuous noise** means ongoing noise, the intensity of which remains at a measurable level (which may vary) without interruption over an indefinite period or a specified period of time.

(e) **decibel (dB)** means a unit of measurement of the sound level.

(f) **excessive noise** means emitter Noise Zone levels from stationary noise sources exceeding the Standards set forth in Section 3 of these Regulations beyond the boundary of adjacent Noise Zones.

(g) **existing noise source** means any noise source(s) within a given Noise Zone, the construction of which commenced prior to the effective date of these Regulations.

(h) **fluctuating noise** means a continuous noise whose level varies with time by more than 5 dB.

(i) **frequency** means the number of vibrations or alterations of sound pressure per second and is expressed in Hertz.

(j) **hertz (Hz)** means a unit of measurement of frequency formerly stated as, and numerically equal to, cycles per second.

(k) **impulse noise** means noise of short duration (generally less than one second), especially of high intensity, abrupt onset and rapid decay, and often rapidly changing spectral composition.

(l) **infrasonic sound** means sound pressure variations having frequencies below the audible range for humans, generally below 20 Hz; subaudible.

(m) L_{10} means the A-weighted sound level exceeded 10% of the time period during which measurement was made.

(n) L_{50} means the A-weighted sound level exceeded 50% of the time period during which measurement was made.

(o) L_{90} means the A-weighted sound level exceeded 90% of the time period during which measurement was made.

(p) **octave band sound pressure level** means the sound pressure level for the sound contained within the specified preferred octave band, stated in dB, as described in ANSI S1.6-1967: Preferred Frequencies and Band Numbers for Acoustical Measurements.

(q) **peak sound pressure level** means the absolute maximum value of the instantaneous sound pressure level occurring in a specified period of time.

(r) **prominent discrete tone** means the presence of acoustic energy concentrated in a narrow frequency range, including, but not limited to, an audible tone, which produces a one-third octave sound pressure level greater than that of either adjacent one-third octave and which exceeds the arithmetic average of the two adjacent one-third octave band levels

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by an amount greater than shown below opposite the center of frequency for the one-third octave band containing the concentration of acoustical energy.

<i>1/3 Octave Band Center Frequency (Hz)</i>	<i>dB</i>
100	16
125	14
160	12
200	11
250	9
315	8
400	7
500	6
630	6
800	5
1000	4
1250	4
1600	4
2000	3
2500	3
3150	3
4000	3
5000	4
6300	4
8000	5
10000	6

(s) **reference pressure** is 0.00002 Newtons per square meter (N/M²), or 20 microPascals, for the purposes of these Regulations.

(t) **sound** means a transmission of energy through solid, liquid, or gaseous media in the form of vibrations which constitute alterations in pressure or position of the particles in the medium and which, in air, evoke physiological sensations, including, but not limited to, an auditory response when impinging on the ear.

(u) **sound analyzer** means a device, generally used in conjunction with a sound level meter, for measuring the sound pressure level of a noise as a function of frequency in octave bands, one-third octave bands or other standard ranges. The sound analyzer shall conform to Type E, Class II, as specified in ANSI S1.11-1971 or latest revision.

(v) **sound level** means a frequency weighted sound pressure level, obtained by the use

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of metering characteristics and the weighting A, B, or C as specified in ANSI, "Specifications for Sound Level Meters," S1.4-1971 or latest revision. The unit of measurement is the decibel. The weighting employed must always be stated as dBA, dBB, or dBC.

(w) **sound level meter** means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels. The sound level meter shall conform to ANSI Specifications for Sound Level Meters S1.4-1971.

(x) **sound pressure level (SPL)** means twenty times the logarithm to the base ten of the ratio of the sound pressure in question to the standard reference pressure of 0.00002 N/M². It is expressed in decible units.

(y) **ultrasonic sound** means sound pressure variations having frequencies above the audible sound spectrum for humans, generally higher than 20,000 Hz; super-audible.

(z) **vibration** means an ascillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

(Effective June 15, 1978)

Sec. 22a-69-1.3. Coordination with other laws

(a) Nothing in these Regulations shall authorize the construction or operation of a stationary noise source in violation of the requirements of any other applicable State law or regulation.

(b) Nothing in these Regulations shall authorize the sale, use or operation of a noise source in violation of the laws and regulations of the Connecticut Department of Motor Vehicles, the Federal Aviation Administration, the U.S. Environmental Protection Agency, or any amendments thereto.

(Effective June 15, 1978)

Sec. 22a-69-1.4. Incorporation by reference

(a) The specifications, standards and codes of agencies of the U.S. Government and organizations which are not agencies of the U.S. Government, to the extent that they are legally incorporated by reference in these Regulations, have the same force and effect as other standards in these Regulations.

(b) These specifications, standards and codes may be examined at the Office of Noise Control, Department of Environmental Protection, State of Connecticut.

(c) Any changes in the specifications, standards and codes incorporated in these Regulations are available at the Office listed in (b) above. All questions as to the applicability of such changes should also be referred to this Office.

(Effective June 15, 1978)

Sec. 22a-69-1.5. Compliance with regulations no defense to nuisance claim

Nothing in any portion of these Regulations shall in any manner be construed as

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authorizing or legalizing the creation or maintenance of a nuisance, and compliance of a source with these Regulations is not a bar to a claim of nuisance by any person. A violation of any portion of these Regulations shall not be deemed to create a nuisance per se.

(Effective June 15, 1978)

Sec. 22a-69-1.6. Severability

If any provision of these Regulations or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of any other part of these Regulations which can be given effect without the invalid provisions or application; and to this end, the provisions of these Regulations and the various applications thereof are declared to be severable.

(Effective June 15, 1978)

Sec. 22a-69-1.7. Exclusions

These Regulations shall not apply to:

(a) Sound generated by natural phenomena, including, but not limited to, wind, storms, insects, amphibious creatures, birds, and water flowing in its natural course.

(b) The unamplified sounding of the human voice.

(c) The unamplified sound made by any wild or domestic animal.

(d) Sound created by bells, carillons, or chimes associated with specific religious observances.

(e) Sound created by a public emergency sound signal attached to an authorized emergency vehicle in the immediate act of responding to an emergency, as authorized by subsection (d) of Section 14.80 and Section 14-1a of Chapter 246 of the General Statutes and all amendments thereto, or located within or attached to a building, pole or other structure for the purpose of sounding an alarm relating to fire or civil preparedness.

(f) Sound created by safety and protective devices.

(g) Farming equipment or farming activity.

(h) Back-up alarms required by OSHA or other State or Federal safety regulations.

(i) Sound created by any mobile source of noise. Mobile sources of noise shall include, but are not limited to, such sources as aircraft, automobiles, trucks, and boats. This exclusion shall cease to apply when a mobile source of noise has maneuvered into position at the loading dock, or similar facility, has turned off its engine and ancillary equipment, and has begun the physical process of removing the contents of the vehicle.

(Effective June 15, 1978)

Sec. 22a-69-1.8. Exemptions

Exempted from these Regulations are:

(a) Conditions caused by natural phenomena, strike, riot, catastrophe, or other condition over which the apparent violator has no control.

(b) Noise generated by engine-powered or motor-driven lawn care or maintenance

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equipment shall be exempted between the hours of 7:00 a.m. and 9:00 p.m. provided that noise discharged from exhausts is adequately muffled to prevent loud and/or explosive noises therefrom.

(c) Noises created by snow removal equipment at any time shall be exempted provided that such equipment shall be maintained in good repair so as to minimize noise, and noise discharged from exhausts shall be adequately muffled to prevent loud and/or explosive noises therefrom.

(d) Noise that originates at airports that is directly caused by aircraft flight operations specifically preempted by the Federal Aviation Administration.

(e) Noise created by the use of property for purposes of conducting speed or endurance events involving motor vehicles shall be exempted but such exemption is effective only during the specific period(s) of time within which such use is authorized by the political subdivision or governmental entity having lawful jurisdiction to sanction such use.

(f) Noise created as a result of, or relating to, an emergency.

(g) Construction noise.

(h) Noise created by blasting other than that conducted in connection with construction activities shall be exempted provided that the blasting is conducted between 8:00 a.m. and 5:00 p.m. local time at specified hours previously announced to the local public, or provided that a permit for such blasting has been obtained from local authorities.

(i) Noise created by on-site recreational or sporting activity which is sanctioned by the state or local government provided that noise discharged from exhausts is adequately muffled to prevent loud and/or explosive noises therefrom.

(j) Patriotic or public celebrations not extending longer than one calendar day.

(k) Noise created by aircraft, or aircraft propulsion components designed for or utilized in the development of aircraft, under test conditions.

(l) Noise created by products undergoing test, where one of the primary purposes of the test is evaluation of product noise characteristics and where practical noise control measures have been taken.

(m) Noise generated by transmission facilities, distribution facilities and substations of public utilities providing electrical powers, telephone, cable television or other similar services and located on property which is not owned by the public utility and which may or may not be within utility easements.

(Effective June 15, 1978)

Sec. 22a-69-1.9. Burden of persuasion regarding exclusions and exemptions

In any proceeding pursuant to these Regulations, the burden of persuasion shall rest with the party attempting to enforce the Regulations. Notwithstanding the foregoing, if an exclusion or exemption stated in these Regulations would limit an obligation, limit a liability, or eliminate either an obligation or a liability, the person who would benefit from the application of the exclusion or exemption shall have the burden of persuasion that the exclusion or exemption applies and that the terms of the exclusion or exemption have been

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met. The Department shall cooperate with and assist persons in determining the application of the provisions of these Regulations.

(Effective June 15, 1978)

Sec. 22a-69-2. Classification of land according to use

Sec. 22a-69-2.1. Basis

Noisy Zone classifications shall be based on the actual use of any parcel or tract under single ownership as detailed by the Standard Land Use Classification Manual of Connecticut (SLUCONN).

(Effective June 15, 1978)

Sec. 22a-69-2.2. Multiple uses

Where multiple uses exist within a given Noise Zone, the least restrictive land use category for the Emitter and Receptor shall apply regarding the noise standards specified in Section 3 of these Regulations.

(Effective June 15, 1978)

Sec. 22a-69-2.3. Class A noise zone

Lands designated Class A shall generally be residential areas where human beings sleep or areas where serenity and tranquility are essential to the intended use of the land.

Class A Land Use Category. The land uses in this category shall include, but not be limited to, single and multiple family homes, hotels, prisons, hospitals, religious facilities, cultural activities, forest preserves, and land intended for residential or special uses requiring such protection.

The specific SLUCONN categories in Class A shall include:

1. Residential
 - 11 Household Units*
 - 12 Group Quarters
 - 13 Mobile Home Parks and Courts
 - 19 Other Residential
5. Trade
 - 583 Residential Hotels
 - 584 Hotels, Tourist Courts and Motels
 - 585 Transient Lodgings
6. Services
 - 651 Medical and Other Health Services; Hospitals
 - 674 Correctional Institutions
 - 691 Religious Activities
7. Cultural, Entertainment and Recreational
 - 711 Cultural Activities

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712 Nature Exhibitions

713 Historic and Monument Sites

*Mobile homes are included if on foundations

9. Undeveloped, Unused and Reserved Lands and Water Areas

92 Reserved Lands

941 Vacant Floor Area—Residential

(Effective June 15, 1978)

Sec. 22a-69-2.4. Class B noise zone

Lands designated Class B shall generally be commercial in nature, areas where human beings converse and such conversation is essential to the intended use of the land.

Class B Land Use Category. The land uses in this category shall include, but not be limited to, retail trade, personal, business and legal services, educational institutions, government services, amusements, agricultural activities, and lands intended for such commercial or institutional uses.

The specific SLUCONN categories in Class B shall include:

4. Transportation, Communication and Utilities

46 Automobile Parking

47 Communication

5. Trade

51 Wholesale Trade

52 Retail Trade - Building Materials

53 Retail Trade - General Merchandise

54 Retail Trade - Food

55 Retail Trade - Automotive Dealers and Gasoline Service Stations

56 Retail Trade - Apparel and Accessories

57 Retail Trade - Furniture, Home Furnishings and Equipment

58 Retail Trade - Eating, Drinking and Lodging - Except 583, 584, and 585

59 Retail Trade - N.E.C.*

6. Services

61 Finance, Insurance and Real Estate Services

62 Personal Services

63 Business Services—Except 637

64 Repair Services

65 Professional Services—Except 651

67 Government Services—Except 672, 674, and 675

68 Educational Services

69 Miscellaneous Services—Except 691

7. Cultural, Entertainment and Recreational

71 Cultural Activities and Nature Exhibitions—Except 711, 712, and 713

72 Public Assembly

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- 73 Amusements
- 74 Recreational Activities
- 75 Resorts and Group Camps
- 76 Parks
- 79 Other, N.E.C.*
- *Not Elsewhere Classified
- 8. Agriculture
- 81 Agriculture
- 82 Agricultural Related Activities
- 9. Undeveloped, Unused, and Reserved Lands and Water Area
- 91 Undeveloped and Unused Land Area
- 93 Water Areas
- 94 Vacant Floor Area—Except 941
- 99 Other Undeveloped Land and Water Areas, N.E.C.*
- *Not Elsewhere Classified

(Effective June 15, 1978)

Sec. 22a-69-2.5. Class C noise zone

Lands designated Class C shall generally be industrial where protection against damage to hearing is essential, and the necessity for conversation is limited.

Class C Land Use Category. The land uses in this category shall include, but not be limited to, manufacturing activities, transportation facilities, warehousing, military bases, mining, and other lands intended for such uses.

The specific SLUCONN categories in Class C shall include:

- 2. Manufacturing — Secondary Raw Materials
- 3. Manufacturing — Primary Raw Materials
- 4. Transportation, Communications and Utilities — Except 46 and 47
- 6. Services
- 637 Warehousing and Storage Services
- 66 Contract Construction Services
- 672 Protective Functions and Related Activities
- 675 Military Bases and Reservations
- 8. Agriculture
- 83 Forestry Activities and Related Services
- 84 Commercial Fishing Activities and Related Services
- 85 Mining Activities and Related Services
- 89 Other Resource Production and Extraction, N.E.C.*
- *Not Elsewhere Classified

(Effective June 15, 1978)

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Sec. 22a-69-3. Allowable noise levels

Sec. 22a-69-3.1. General prohibition

No person shall cause or allow the emission of excessive noise beyond the boundaries of his/her Noise Zone so as to violate any provisions of these Regulations.

(Effective June 15, 1978)

Sec. 22a-69-3.2. Impulse noise

(a) No person shall cause or allow the emission of impulse noise in excess of 80 dB peak sound pressure level during the nighttime to any Class A Noise Zone.

(b) No person shall cause or allow the emission of impulse noise in excess of 100 dB peak sound pressure at any time to any Noise Zone.

(Effective June 15, 1978)

Sec. 22a-69-3.3. Prominent discrete tones

Continuous noise measured beyond the boundary of the Noise Zone of the noise emitter in any other Noise Zone which possesses one or more audible discrete tones shall be considered excessive noise when a level of 5 dBA below the levels specified in Section 3 of these Regulations is exceeded.

(Effective June 15, 1978)

Sec. 22a-69-3.4. Infrasonic and ultrasonic

No person shall emit beyond his/her property infrasonic or ultrasonic sound in excess of 100 dB at any time.

(Effective June 15, 1978)

Sec. 22a-69-3.5. Noise zone standards

(a) No person in a Class C Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

	<i>Receptor</i>			
	<i>C</i>	<i>B</i>	<i>A/Day</i>	<i>A/Night</i>
<i>Class C Emitter</i> <i>to</i>	70 dBA	66 dBA	61 dBA	51 dBA

Levels emitted in excess of the values listed above shall be considered excessive noise.

(b) No person in a Class B Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

Receptor

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	<i>Receptor</i>			
	<i>C</i>	<i>B</i>	<i>A/Day</i>	<i>A/Night</i>
<i>Class B Emitter</i>	62 dBA	62 dBA	55 dBA	45 dBA
<i>to</i>				

Levels emitted in excess of the values listed above shall be considered excessive noise.

(c) No person in a Class A Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

	<i>Receptor</i>			
	<i>C</i>	<i>B</i>	<i>A/Day</i>	<i>A/Night</i>
<i>Class C Emitter</i>	62 dBA	55 dBA	55 dBA	45 dBA
<i>to</i>				

Levels emitted in excess of the values listed above shall be considered excessive noise.

(Effective June 15, 1978)

Sec. 22a-69-3.6. High background noise areas

In those individual cases where the background noise levels caused by sources not subject to these Regulations exceed the standards contained herein, a source shall be considered to cause excessive noise if the noise emitted by such source exceeds the background noise level by 5 dBA, provided that no source subject to the provisions of Section 3 shall emit noise in excess of 80 dBA at any time, and provided that this Section does not decrease the permissible levels of the other Sections of this Regulation.

(Effective June 15, 1978)

Sec. 22a-69-3.7. Existing noise sources

Existing noise sources constructed between the effective date of these Regulations and January 1, 1960 shall be provided a permanent five (5) dBA maximum noise level allowance over levels otherwise herein required regardless of subsequent changes in ownership or facility utilization processes at the location of the existing noise source. Existing noise sources constructed prior to 1960 shall be provided a permanent ten (10) dBA maximum noise level allowance over levels otherwise herein required regardless of subsequent changes in ownership or facility utilization processes at the location of the existing noise source. Additionally, all existing noise sources shall be provided twenty-four (24) months in order to achieve compliance with these Regulations if a notice of violation has been, or may be, issued to the source. This time period begins with the effective date of these Regulations, not with the date of the notice of violation.

(Effective June 15, 1978)

Sec. 22a-69-3.8. Adaptive reuse of existing buildings

Buildings and other structures that exist as of the effective date of these Regulations which have been remodeled or converted for adaptive reuse or which may be remodeled or converted at a future date shall be provided a permanent five (5) dBA maximum noise level allowance above the Emitter Class of the new use of the building over levels otherwise herein required.

(Effective June 15, 1978)

Sec. 22a-69-4. Measurement procedures

Acoustic measurements to ascertain compliance with these Regulations shall be in substantial conformity with standards and Recommended Practices established by professional organizations such as ANSI and SAE.

(a) Personnel conducting sound measurements shall be trained and experienced in the current techniques and principles of sound measuring equipment and instrumentation. The Commissioner shall establish sufficiently detailed measurement procedure guidelines specifying, but not necessarily being limited to, the following: The appropriate utilization of fast or slow sound level meter dampening when making sound level measurements, the rise time specified in microseconds for measuring impulse noise, the need for a whole circuit in such measurements, and the proper weighting to be used in measuring impulse noise.

(b) Instruments shall conform to the following standards of their latest revisions:

(i) ANSI S1.4-1971, "Specifications for Sound Level Meters," Type 1 or 2.

(ii) ANSI S1.11-1966, "Specifications for Octave, One-Half Octave and One-Third Octave Band Filter Sets," Type E, Class II.

(iii) If a magnetic tape recorder or a graphic level recorder or other indicating device is used, the system shall meet the applicable requirements of SAE Recommended Practice J184, "Qualifying a Sound Data Acquisition System."

(c) Instruments shall be set up to conform to ANSI S1.13-1971, "Methods for the Measurement of Sound Pressure Levels."

(d) Instrument manufacturer's instructions for use of the instruments shall be followed, including acoustical calibration of equipment used.

(e) The determination of L_{90} to ascertain background levels requires a statistical analysis. A graphic level recording and visual interpretation of the chart recording to determine the levels is an acceptable method. Instruments designed to determine the cumulative distribution of noise levels are also acceptable used either in the field or in the laboratory to analyze a tape recording. Dynamic visual estimations from a sound level meter are not an acceptable method for determining such levels. Sound level sampling techniques are acceptable and will often be the most practical to employ. Such a technique using Connecticut Noise Survey Data Form #101 with accompanying instructions is acceptable.

(f) In measuring compliance with Noise Zone Standards, the following short-term noise level excursions over the noise level standards established by these Regulations shall be allowed, and measurements within these ranges of established standards shall constitute

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compliance therewith:

Allowable Levels above standards (dBA)	Time period of such levels (minutes/hour)
3	15
6	7½
8	5

(g) Measurements taken to determine compliance with Section 3 shall be taken at about one foot beyond the boundary of the Emitter Noise Zone within the receptors's Noise Zone. The Emitter's Noise Zone includes his/her individual unit of land or group of contiguous parcels under the same ownership as indicated by public land records. The Emitter's Noise Zone also includes contiguous publicly dedicated street and highway rights-of-way, railroads rights-of-way and waters of the State.

(Effective June 15, 1978)

Sec. 22a-69-5. Other provisions

Sec. 22a-69-5.1. Intrusion alarms

No person shall cause, suffer, allow or permit the operation of any intrusion alarm which, from time of activation of audible signal, emits noise for a period of time exceeding ten minutes when attached to any vehicle or thirty minutes when attached to any building or structure.

The repetition of activation of the audible signal of an intrusion alarm due to malfunction, lack of proper maintenance, or lack of reasonable care shall be considered excessive noise.

(Effective June 15, 1978)

Sec. 22a-69-6. Airport facilities

Sec. 22a-69-6.1. Extent of regulation

Airport facilities are subject to Section 3 to the extent not preempted by state or federal law or regulation.

(Effective June 15, 1978)

Sec. 22a-69-6.2. Reserved

(This subsection is reserved for possible future regulations regarding the assessment of, and long-range plans for, the reduction of airport facility noise impacts to the extent not preempted by state or federal law or regulation.)

(Effective June 15, 1978)

Sec. 22a-69-7. Variances and enforcement procedures

Sec. 22a-69-7.1. Variances

(a) Any person who owns or operates any stationary noise source may apply to the Commissioner for a variance or a partial variance from one or more of the provisions of these Regulations. Applications for a variance shall be submitted on forms furnished by the Commissioner and shall supply such information as he/she requires, including, but not limited to:

(i) Information on the nature and location of the facility or process for which such application is made.

(ii) The reason for which the variance is required, including the economic and technical justifications.

(iii) The nature and intensity of noise that will occur during the period of the variance.

(iv) A description of interim noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom.

(v) A specific schedule of the best practical noise control measures, if any, which might be taken to bring the source into compliance with those Regulations from which a variance is sought, or a statement of the length of time during which it is estimated that it will be necessary for the variance to continue.

(vi) Any other relevant information the Commissioner may require in order to make a determination regarding the application.

(b) Failure to supply the information required by the form furnished by the Commissioner shall be cause for rejection of the application unless the applicant supplies the needed information within thirty (30) days of the written request by the Commissioner for such information.

(c) No variance shall be approved unless the applicant presents adequate proof to the Commissioner's satisfaction that:

(i) Noise levels occurring during the period of the variance will not constitute a danger to the public health; and

(ii) Compliance with the Regulations would impose an arbitrary or unreasonable hardship upon the applicant without equal or greater benefits to the public.

(d) In making a determination on granting a variance, the Commissioner shall consider:

(i) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property which is caused or threatened to be caused.

(ii) The social and economic value of the activity for which the variance is sought.

(iii) The ability of the applicant to apply best practical noise control measures, as defined in these Regulations.

(e) Following receipt and review of an application for a variance, the Commissioner shall fix a date, time and location for a hearing on such application.

(f) The Commissioner shall cause the applicant to publish at his/her own expense all notices of hearings and other notices required by law, including, but not limited to, notification of all abutters of record.

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(g) Within sixty (60) days of the receipt of the record of the hearings on a variance application, the Commissioner shall issue his/her determination regarding such application. All such decisions shall briefly set forth the reasons for the decision.

(h) The Commissioner may, at his/her discretion, limit the duration of any variance granted under these Regulations. Any person holding a variance and needing an extension of time may apply for a new variance under the provisions of these Regulations. Any such application shall include a certification of compliance with any condition imposed under the previous variance.

(i) The Commissioner may attach to any variance any reasonable conditions he/she deems necessary and desirable, including, but not limited to:

(i) Requirements for the best practical noise control measures to be taken by the owner or operator of the source to minimize noise during the period of the variance.

(ii) Requirements for periodic reports submitted by the applicant relating to noise, to compliance with any other conditions under which the variance was granted or to any other information the Commissioner deems necessary.

(j) The filing of an application for a variance shall operate as a stay of prosecution, except that such stay may be terminated by the Commissioner upon application of any party if the Commissioner finds that protection of the public health so requires.

(k) In any case where a person seeking a variance contends that compliance with any provision of these Regulations is not practical or possible because of the cost involved either in installing noise control equipment or changing or curtailing the operation in any manner, he/she shall make available to the Commissioner such financial records as the Commissioner may require.

(l) A variance may include a compliance schedule and requirements for periodic reporting of increments of achievement of compliance.

(Effective June 15, 1978)

Sec. 22a-69-7.2. Transference

No person who owns, operates or maintains a stationary noise source shall transfer a variance from one site to another site.

(Effective June 15, 1978)

Sec. 22a-69-7.3. Responsibility to comply with applicable regulations

Approval of a variance shall not relieve any person of the responsibility to comply with any other applicable Regulations or other provisions of federal, state or local laws, ordinances or regulations.

(Effective June 15, 1978)

Sec. 22a-69-7.4. Violations and enforcement

(a) No person shall violate or cause the violation of any of these Regulations.

(b) Each day on which a violation occurs or continues after the time for correction of

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Department of Environmental Protection

§22a-69-7.4

the violation given in the order has elapsed or after thirty (30) days from the date of service of the order, whichever is later, shall be considered a separate violation of these Regulations.

(c) Qualified personnel of the Office of Noise Control shall, with or without complaints, conduct investigations and ascertain whether these Regulations have been complied with. Whenever such personnel determines that any of these Regulations have been violated or there has been a failure to comply therewith, they shall make and serve upon the person(s) responsible for the violation a written order specifying the nature of the violation or failure and affording a reasonable time for its correction or remedy. Prior to the issuance of such order, such personnel shall make a reasonable effort in light of the circumstances to correct a violation or achieve compliance by means of conference, conciliation and persuasion as required by statute. Unless the person(s) against whom an order has been served files a written answer thereto with the Commissioner within thirty (30) days after the date of service of the order and requests a hearing thereon, such order shall become final and effective in accordance with the Connecticut Administrative Procedures Act and the rules, practices, and procedures of the Department of Environmental Protection.

(Effective June 15, 1978)

VI. REGULATION OF MISCELLANEOUS OTHER USES (R THROUGH V)

§ 18:64 Racetracks

Racetracks, whether they are constructed for horses, dogs, cars, or motorcycles, may be subject to land use regulations intended to protect neighboring land from impacts such as noise, dust, traffic, safety concerns, and environmental damage. Some zoning ordinances contain provisions specifically applicable to racetracks. In Kent County, Delaware, for example, racetrack must: (1) front on a state-maintained highway; (2) have any stables set back at least 500 feet from adjoining property lines; (3) receive approval from the state department of transportation for each entrance and exit; (4) have a valid license from the state racing commission; (5) comply with off-street parking requirements; and (6) meet any additional requirements submitted by the development advisory committee.¹ And in Henderson County, North Carolina, motorsports facilities must be setback two miles from any health care facility; racing surfaces must be set back up to 1,500 feet from property lines; and if the facility is located within two miles of a school, library, house of worship, or residence, then it must obtain a special permit.² In the City of Millville, New Jersey, racetracks are permitted in the Airpark Motorsports Entertainment District, subject to a minimum lot size requirement of 450 acres and site plan review.³ Some municipalities prohibit racing facilities all together,⁴ and such total prohibitions have been found to be lawful.⁵ Other zoning ordinances make no specific provision for racetracks, although they may be subject to general environmental review, noise, and licensing requirements.

[Section 18:64]

¹Kent County, Delaware, Code § 205-330.

²Henderson County, North Carolina, Code § A603-6.

³City of Millville, New Jersey, § 30-247.5.

⁴See, e.g.,

Connecticut: Town of Cromwell Code § 183-1.

New York: City of Geneva Code § 143-1.

⁵See, e.g.,

Rhode Island: *Portatree Timing Systems, Inc. v. Town of Richmond*, 2001 WL 418986 (R.I. Super. Ct. 2001) (finding ban on racetracks not to constitute taking).

One appellate court upheld a planning board's determination that a proposed motorcycle track constituted a recreational use, defined as "private, noncommercial recreational purposes" in the local zoning ordinance.^{5.50} With respect to environmental review, the court found that the evidence revealed that the Planning Board hired experts and professional engineers who concluded that "the track will have a minimal impact upon the sound levels and receiving locations," and hence it was satisfied the board acted appropriately.^{5.70}

In *Dow v. Town of Effingham*, the Supreme Court of New Hampshire upheld a racetrack ordinance against substantive due process and vagueness challenges. The court found that restrictions related to inspections, litter removal, overnight camping, liability insurance, noise and junk were rationally related to the protection of the public health, safety and general welfare. The court also determined that a \$50,000 surety bond requirement was reasonable. The fact that there were no specific requirements for such things as "the number of security officers to be on site, traffic control measures, monitoring wells, drainage facilities, lighting, noise control measures, access and egress, emergency services, off-street parking, and lavatory facilities," did not render the ordinance unconstitutionally vague because "[t]hose phrases the plaintiff cites as vague are in fact intentionally and

^{5.50}Granger Group v. Town of Taghkanic, 77 A.D.3d 1137, 909 N.Y.S.2d 556 (3d Dep't 2010), leave to appeal denied, 2011 WL 589703 (N.Y. 2011).

^{5.70}Granger Group v. Town of Taghkanic, 77 A.D.3d 1137, 909 N.Y.S.2d 556 (3d Dep't 2010), leave to appeal denied, 2011 WL 589703 (N.Y. 2011).

necessarily flexible to enable the effective regulation of all types of race tracks.”⁶

It has been held that an ordinance prohibiting “race tracks of any kind except a race track used exclusively for contests . . . between human beings only” does not permit the establishment of a raceway for use by children operating two horsepower midget cars.⁷ Where racetracks were prohibited by the zoning ordinance, a Pennsylvania court held that the restriction covered a track where as many as 12 snowmobiles raced over a fixed course for cash prizes.⁸

Where a specific provision for racetracks was lacking, but the ordinance permitted “fairgrounds” and customary accessory uses, a Michigan court held that automobile racing could be conducted in connection with the fairground use.⁹ In a Pennsylvania case, the term “recreation” was held to include horse racing in an ordinance that permitted recreational uses in industrial districts.¹⁰ However, in another Pennsylvania case the court held that a motocross track could not be located in an R-3 district where “recreation grounds” and “parks” were permitted uses.¹¹ And a Massachusetts court held that property located in an industrial could not be used for a motorcycle cross country practice court where the ordinance permitted any “lawful industrial use which is not dangerous by reason of fire, explosion or other hazards, or injurious, noxious or detrimental to the Town . . . by reason of emission of dust, odors, gas, smoke, vibration or some other nuisance.”¹²

In some cases, a racetrack may be found to constitute a

⁶Dow v. Town of Effingham, 148 N.H. 121, 803 A.2d 1059 (2002).

⁷Norwalk v Auction City, Inc., 186 Cal App 2d 287, 8 Cal Rptr 781, 83 ALR2d 872 (2d Dist. 1960).

⁸Ironstone Corp. v. Zoning Hearing Bd. of Douglass Tp., 5 Pa. Commw. 420, 291 A.2d 310, 4 Env’t. Rep. Cas. (BNA) 1276, 2 Env’tl. L. Rep. 20469 (1972).

⁹Boissonneault v. Saginaw County Agr. Soc., 330 Mich. 143, 47 N.W.2d 53 (1951).

¹⁰Mt. Laurel Racing Ass’n v. Zoning Hearing Bd., Municipality of Monroeville, 73 Pa. Commw. 531, 458 A.2d 1043 (1983).

See also

Missouri: Aquamsi Land Co. v. City of Cape Girardeau, 346 Mo. 524, 142 S.W.2d 332 (1940) (holding that racetrack was proper facility of public park because it contributed to outdoor recreation available at such park).

Pennsylvania: Union Tp. v. Ethan Michael, Inc., 2009 WL 2177225 (Pa. Commw. Ct. 2009) (upholding special exception approval for a racetrack, characterized as a recreational use, in an agricultural preservation zone).

¹¹Neshannock Tp. v. Musguire, 86 Pa. Commw. 246, 484 A.2d 839 (1984).

¹²Town of Uxbridge v. Griff, 68 Mass. App. Ct. 174, 860 N.E.2d 972 (2007).

nuisance, and a racetrack that is a nuisance in fact may be enjoined notwithstanding that it is in compliance with the zoning regulations.¹³ In an Iowa case, for example, a racetrack located 77 feet from a residence was held to be a nuisance where the property owners could not hear the phone ring and were disturbed by fumes. The same racetrack, however, was not found to be a nuisance as to impacted residences located farther away, even though it caused noise, vibrations, traffic, and dust.¹⁴ In *Parker v. Ashford*, the Supreme Court of Alabama held that the defendant could be permanently enjoined from building a dirt racetrack where the proximity of adjoining landowners made it reasonably certain that noise and light from the racetrack would cause a nuisance; there was no requirement that the nuisance had to already be in existence.¹⁵ If a racetrack is found to be a nuisance, it may be permitted to continue, so long as subject to restrictions relating to noise, dust, and hours of operation.¹⁶

Since racetracks are often not mentioned in zoning regulations, a proposed new track is sometimes permitted by a specific amendment. An amendment to permit stock car racing in an industrial zone was upheld where a corporation had maintained a "torture track" for testing automobiles in the vicinity of the proposed track.¹⁷ A refusal to reclassify land to allow a motel owner to establish a racetrack was sustained on the ground that the track could adversely affect the public health and safety.¹⁸

A variance to operate a racetrack is not unreasonable simply because betting will be permitted, where "on track" betting has

See also

Ohio: *Engel v. Crosby Twp. Bd. of Zoning Appeals*, 2009 Ohio 240 (Ohio App. 2009) (upholding refusal to permit motorsports park in industrial district because board determined that use would constitute nuisance and ordinance was not vague).

¹³See, e.g.,

New York: *State v. Waterloo Stock Car Raceway, Inc.*, 96 Misc. 2d 350, 409 N.Y.S.2d 40 (Sup 1978).

Ohio: *Angerman v. Burick*, 2003-Ohio-1469, 2003 WL 1524505 (Ohio Ct. App. 9th Dist. Wayne County 2003) (finding commercial motorcross track to constitute nuisance).

¹⁴*Perkins v. Madison County Livestock & Fair Ass'n*, 613 N.W.2d 264 (Iowa 2000).

¹⁵*Parker v. Ashford*, 661 So. 2d 213 (Ala. 1995).

¹⁶*McCombs v. Joplin 66 Fairgrounds, Inc.*, 925 S.W.2d 946 (Mo. Ct. App. S.D. 1996).

¹⁷*Brown v. Shelby Tp., Macomb County*, 360 Mich. 299, 103 N.W.2d 612 (1960).

¹⁸*Guhl v. Par-3 Golf Club, Inc.*, 238 Ga. 43, 231 S.E.2d 55 (1976).

been legalized in the community.¹⁹ And where a drag racing strip was already in operation, it was held reasonable for a county to approve a special use permit for the motorsports park to open a go cart track, as the additional track would not substantially increase the amount of noise produced by the facility.²⁰ But a variance to establish a racetrack may be refused where the landowner proved only that the track would be a more profitable use.²¹

An Ohio court held the addition of stock car racing at a nonconforming racetrack did not constitute a changed or expanded up where the facility had previously been used for the racing of micro midget cars and ATVs, and the stock cars would create less noise and dust.²² In New York, it was held that a landowner did not have a right to maintain a racetrack as a nonconforming use where the property had been used for racing at an earlier date but the use had been discontinued prior to adoption of a restrictive ordinance.²³ Similarly, an owner may lose the protection of nonconforming use status when she exceeds the established nonconforming use by expanding the racing facilities²⁴ or holding races more frequently, creating a greater degree of noise and pollution.²⁵

Where the policy of the state, expressed through the adoption of a constitutional amendment, is to permit horseracing, a municipality is without authority to deny a permit solely on moral grounds. The permit-issuing authority may rest in the municipal-

¹⁹See *Hochberg v. Borough of Freehold*, 40 N.J. Super. 276, 123 A.2d 46 (App. Div. 1956).

²⁰*Harding v. Board of Adjustment of Davie County*, 170 N.C. App. 392, 612 S.E.2d 431 (2005).

See also

South Dakota: Boxdorfer v. Sully County Bd. of Adjustment, 2004 SD 117, 689 N.W.2d 39 (S.D. 2004) (upholding issuance of special permit where there was substantial evidence that the racetrack would not interfere with nearby properties).

²¹*Carroll v. Ingram*, 59 A.D.2d 85, 397 N.Y.S.2d 220 (3d Dep't 1977).

²²*Deerfield Twp. v. Deerfield Raceway, L.L.C.*, 2008-Ohio-4047, 2008 WL 3270951 (Ohio Ct. App. 11th Dist. Portage County 2008).

²³*Carroll v. Ingram*, 59 A.D.2d 85, 397 N.Y.S.2d 220 (3d Dep't 1977).

²⁴*Board of Trustees of Jefferson Tp. v. Sunset Ramblers Motorcycle Club, Inc.*, 1993 WL 46490 (Ohio Ct. App. 3d Dist. Crawford County 1993) (holding that nonconforming racetrack could not expand onto property acquired after the restrictions were enacted).

²⁵*Perkins v. Madison County Livestock & Fair Ass'n*, 613 N.W.2d 264 (Iowa 2000).

ity, but the moral issue has been resolved by the people of the state.²⁶

In *Citizens Accord, Inc. v. Town of Rochester*, it was held that the town's failure to prevent a racetrack from exceeding the zoning district's noise limits did not constitute a taking. As the court explained, "[a]lthough CAI's members undoubtedly are forced to endure noise emanating from the Speedway, there is no evidence that there has been a sufficient physical invasion of the property of CAI or its members or that they have been deprived of economically viable use of their land."²⁷

²⁶Desert Turf Club v. Board of Sup'rs of Riverside County, 141 Cal. App. 2d 446, 296 P.2d 882 (4th Dist. 1956).

²⁷*Citizens Accord, Inc. v. Town of Rochester*, 2000 WL 504132 (N.D. N.Y. 2000), judgment aff'd, 29 Fed. Appx. 767 (2d Cir. 2002).

ORDINANCES OF THE TOWN OF SALISBURY, CONNECTICUT

(Updated January 5, 2016)

- No. 1 May 14, 1937
Amended by Ordinance #50 - May 2, 1982

SALE OF ALCOHOLIC LIQUORS ON SUNDAY

Resolved, that the Town will allow the sale of alcoholic liquors on Sunday between the hours of twelve o'clock noon and nine o'clock in the evening in hotels and/or restaurants with meals. (Page 344)

- No. 2 May 14, 1937
Repealed and replaced by Ordinance #40 - September 9, 1977

HAWKING AND VENDING

No person shall vend or hawk upon the public streets of the Town of Salisbury any goods, wares of other merchandise at public or private sale or auction, or vend or peddle such articles from house to house within its limits, without first paying to the Treasurer of such Town a license fee of \$25.00, for each team or vehicle used in connection with such vending, hawking or peddling, whereupon such Treasurer shall issue to such person a peddler's license permitting such vending, hawking or peddling for the term of one year from the date of such license. (Page 344)

- No. 3 October 2, 1944

ELECTION HOURS

That at all municipal and special elections in the Town the polls for reception of ballots shall remain open from seven o'clock in the forenoon until six o'clock in the afternoon, any By-laws heretofore enacted to, the contrary notwithstanding. (Page 11)

Note: re current CT State Law, election hours are 6:00 a.m. to 8:00 p.m.

- No. 4 March 31, 1949
Repealed and replaced by Ordinance #88 - June 20, 2003

LOADS OF RUBBISH TO BE COVERED

No person shall operate on any public highway in the Town of Salisbury a motor vehicle carrying rubbish without providing a cover for the load. Any person violating this ordinance shall be fined not more than ten dollars. (Page 87)

13. Admission to the Grove restricted to local residents only on Saturdays, Sundays and holidays. A "Local Resident" is defined as one, who at the time admission is sought, occupies or is the member of a family or bona fide guest of a family who occupies a permanent or summer home within the Township of Salisbury on not less than a monthly basis.

14. Admission will be allowed for bona fide family guests of local residents only if accompanied by a member of family of whom they are guests. Number of such family guests limited to ten in any one week. Boarders, roomers, or renters, at hotels, motels, cabins. or guest homes, etc. are not considered bona fide guests.

15. "Free Facilities" for children of the Town of Salisbury of high school age and younger shall consist of access to the Grove, use of dressing and undressing rooms and checking clothes; swimming; raft; beach; benches and tables in Grove and fireplaces.

16. Acknowledging the requirements as stated in the gift offer by the donor of the Grove property and accepted by the Town Meeting, the Board of Selectmen is to regulate and operate the facilities of the Grove for the happiness, welfare and best interests of all the children and citizens of the Town.

17. So long as there is no substantial interference with the use of Grove facilities by individuals, the Board of Selectmen may issue permits for use of the facilities by summer camps on such terms and conditions as the Board deems proper. Applications for permits must be filed annually before April 1st, and at no time is the granting of a permit to be considered as creating the right of any camp to use Grove facilities during any subsequent season.

18. The Board of Selectmen is hereby empowered to adopt and enforce regulations to effectuate this ordinance.

19. Persons violating any of the provisions of this ordinance shall be fined not more than One Hundred Dollars for each such violation.

No. 7 September 1, 1955

PERMITTING RAFFLES AND BAZAARS

The electors met and voted in favor of the Raffles and Bazaar Act. No. 409.
(Page 233)

No. 8 September 2, 1955

PLANNING AND ZONING COMMISSION

(a) The Electors and those qualified to vote in town meetings met and voted in favor of zoning and planning as follows:

(b) Town planning: To create a planning commission under Section 292c of the 1953 Supplement to the General Statutes.

(c) Zoning: In addition to (a) above, to adopt the provisions of Chapter 42 of the General Statutes, Revision of 1949, as amended, and to exercise through a Zoning Commission the powers granted thereunder.

(d) To designate the zoning commission as the Planning and Zoning Commission as provided by Section 840 of said General Statutes.

(e) To ordain that any such commission shall be elected by Town vote. (Page 233)

THE
STANDING
COMMITTEE
HEARINGS

THE
STANDING
COMMITTEE
HEARINGS

MOTOR VEHICLE

CONN.
GENERAL
ASSEMBLY
1939

CONN.
STATE
LIBRARY

The following people registered in favor of this
compulsory insurance:

Senator Sullivan, New Britain, - exclusive of \$250 feature.

Mr. Frank Covello

Mr. Chris Nielson

He wished to have put in.

The following registered as opposed:

Committee of the Reg's Bureau

Mr. Hilton, West Hartford.

Rep. Landeck

Cotteral

" Lenihan

" Bogue

" Dorothy Robertx

" Johnston.

" Neefus (to H.B. 569)

✓ H. B. 580 AN ACT CONCERNING MOTOR VEHICLE RACING.
(Mr. Walker)

Commissioner Anthony Sunderland, State Police Dept.: This is a proposed amendment to Section 898c, a bill which was adopted in 1935 putting on the State Police the burden of inspection of race tracks and place of exhibition of motor vehicle race or motorcycle race. We are asking now that a fee of \$10.00 be charged for each permit issued. This work means the time of a man going there for the inspection, and the clerical work involved of issuing the permit. We further ask that the application of the persons interested be made ten days ahead because we now often get a telegram asking for this inspection in the morning for a race which is to be held that same afternoon. We are asking that those two changes be made in the bill. We have issued 184 licenses in four years. The fee would go to the State Treasurer and not to the Police Department.

✓ S.B. 785 AN ACT CONCERNING THE FINANCIAL RESPONSIBILITY LAW
(Senator Mills)

Major Harold B. Pinney, Deputy Commissioner, Motor Vehicle Dept:
The only change made in the present law is in the final sentence. We wish it to read subsections (b) and (c) of section 566c. In some manner in compiling the bill last year the law read so as to include the entire section of 566c which includes reckless driving. The commissioner

148 N.H. 121
Supreme Court of New Hampshire.

E. Milton DOW
v.
TOWN OF EFFINGHAM.

No. 2001-084.

|
Argued May 8, 2002.

|
Opinion Issued July 25, 2002.

Race track operator filed declaratory judgment action asserting that town automobile race track ordinance was unconstitutional. Homeowners association intervened. The Superior Court, Carroll County, O'Neill, J., upheld ordinance, and track operator appealed. The Supreme Court, Duggan, J., held that: (1) race track ordinance did not violate substantive due process; (2) procedures used in enacting race track ordinance were sufficient to comply with procedural due process requirements; (3) operator did not have vested entitlement based on improvements made to lot; (4) evidence that members of drafting committee allegedly acted in bad faith was not relevant; and (5) ordinance was not vague.

Affirmed.

Attorneys and Law Firms

****1062 *122** Cooper, Deans & Cargill, P.A., of North Conway (Randall F. Cooper on the brief and orally), for the plaintiff.

Upton & Hatfield, LLP, of Concord (Barton L. Mayer on the brief and orally), for the defendant.

McNeill, Taylor & Gallo, P.A., of Dover (Malcolm R. McNeill, Jr. and Lynne M. Dennis on the brief, and Mr. McNeill orally), for the intervenor.

Opinion

***123** DUGGAN, J.

The plaintiff, E. Milton Dow, appeals a decision of the Superior Court (O'Neill, J.) upholding the validity of a

race track ordinance enacted by the defendant, Town of Effingham (town). We affirm.

On March 2, 1997, the plaintiff informed the town's planning board of his intent to construct and operate a race track on his land. At that time, the town had no zoning laws in effect and, other than the requirement that he secure a license from the town prior to the scheduling of any outdoor public event, the town had no other ordinances, rules or regulations which would have prevented the plaintiff from proceeding with his project. On March 4, 1997, the planning board informed the town's board of selectmen that the plaintiff intended to construct a NASCAR race track on his property. The board of selectmen appointed a Race Track Ordinance Committee (committee) to draft a race track ordinance for the town. The committee met regularly for a period of months, reviewed ordinances from several other towns, and ultimately drafted an ordinance which it submitted to the board of selectmen for consideration. The board of selectmen adopted the ordinance on an interim basis under RSA 31:42 (2000) and placed an article in the town warrant notifying voters that they would be asked to vote upon the ordinance at the next annual town meeting. At that meeting, a ballot vote was taken and a majority of the voters ****1063** in attendance voted to adopt the ordinance.

On September 13, 1999, the plaintiff applied to the selectmen for a race track permit, as required by the ordinance. The selectmen voted to deny the permit. The plaintiff did not file a request for rehearing, but instead filed a petition for declaratory judgment in superior court asserting that the race track ordinance was unconstitutional on its face and as applied to his property. Lost Valley Property Owners, Inc., a homeowners association representing the owners of lots in a residential subdivision abutting the plaintiff's property, intervened in the suit. After a view and a three-day trial, the superior court ruled that the race track ordinance was neither unconstitutional on its face nor as applied to the plaintiff's property. The plaintiff filed a motion to reconsider and for a new trial, which was denied.

On appeal, the plaintiff argues that: (1) the superior court did not use the proper standard of review in determining the constitutionality of the ordinance; (2) the town did not follow proper procedures in enacting the ordinance; (3) the ordinance, even if validly enacted, should not

apply to the plaintiff because he had a vested right to complete construction and operate the race track and because it was adopted in a bad faith attempt to prohibit a permissible use of his property; and (4) the ordinance is *124 impermissibly vague. The plaintiff also argues that the superior court erred in denying his request for attorney's fees.

[1] We will affirm the superior court's factual findings unless they are unsupported by the evidence and we will affirm the superior court's legal rulings unless they are erroneous as a matter of law. *Morgenstern v. Town of Rye*, 147 N.H. 558, 561, 794 A.2d 782 (2002).

I. Substantive Due Process

We first consider whether the superior court used the correct standard of review in determining the constitutionality of the ordinance. The plaintiff makes a substantive due process claim, arguing that the race track ordinance is invalid because it violates his constitutionally protected right to own, use, and enjoy his property. The superior court determined that the race track ordinance was valid after subjecting it to a rational basis test. More specifically, the court inquired whether the plaintiff proved that the ordinance "constitutes a restriction on property rights that is not rationally related to the town's legitimate goals." *Asselin v. Town of Conway*, 137 N.H. 368, 372, 628 A.2d 247 (1993). On appeal, the plaintiff argues that the superior court erred in evaluating his substantive due process challenge to the ordinance by applying the rational basis test, instead of the middle tier, or fair and substantial relationship standard.

[2] [3] [4] [5] A substantive due process challenge to an ordinance questions the fundamental fairness of an ordinance "both generally and in the relationship of the particular ordinance to particular property under particular conditions existing at the time of litigation." *Caspersen v. Town of Lyme*, 139 N.H. 637, 642, 661 A.2d 759 (1995) (citing 1 E. Ziegler, Jr., Rathkopf's *The Law of Zoning and Planning*, § 3.01[1], at 3–3 (2001)). In contrast, an equal protection challenge to an ordinance is an assertion that the government impermissibly established classifications and, therefore, treated similarly situated individuals in a different manner. *See* 2 R. Rotunda & J. Nowak, *Treatise on Constitutional Law: Substance and Procedure* § 14.7, at 566–67 (3d ed.1999). In determining whether an ordinance is a reasonable exercise of the municipality's police powers and, therefore, can withstand

**1064 a substantive due process challenge, we have consistently applied the rational basis test. Under this test, we consider whether "the ordinance bears a reasonable relationship to its objective and does not unduly restrict fundamental rights." *Powers v. Town of Hampton*, 125 N.H. 273, 276, 480 A.2d 143 (1984). While substantive due process challenges are evaluated under this rational basis test, we review equal protection challenges to ordinances with heightened scrutiny. *See Town of Chesterfield v. Brooks*, 126 N.H. 64, 67–69, 489 A.2d 600 (1985) (explaining that equal *125 protection challenges are subject to either strict scrutiny or fair and substantial relationship standard).

Although the plaintiff does not contend that the ordinance violates his equal protection rights, he argues that the race track ordinance is not a reasonable exercise of the town's police power and urges this court to adopt the fair and substantial relationship test as the appropriate standard for reviewing his substantive due process claim. Under the fair and substantial relationship test, the regulation must "be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Id.* at 69, 489 A.2d 600. The plaintiff argues that because the right to own, use, and enjoy one's property is considered a fundamental personal right, *see id.* at 67, 489 A.2d 600, any regulation of land use that restricts an individual's property rights should be evaluated under this heightened scrutiny. While the New Hampshire Constitution provides that all persons have the right to acquire, possess, and protect their property, *see* N.H. CONST. pt. I, arts. 2, 12, this court has never employed the fair and substantial relationship standard for substantive due process claims. *Cf. Caspersen*, 139 N.H. at 646, 661 A.2d 759 (Brock, C.J., concurring) (suggesting that given an appropriate occasion, we should review our holding that substantive due process challenges to zoning ordinances are evaluated under the rational basis standard); *see also Quirk v. Town of New Boston*, 140 N.H. 124, 129, 663 A.2d 1328 (1995). We see no reason to alter the standard today.

[6] When a party contests the validity of an ordinance on the basis that it burdens *all* seeking to engage in the proscribed action, the appropriate inquiry is whether the claimant has proved that the ordinance constitutes a restriction on property rights that is not rationally related to the town's legitimate goals. *See Quirk*, 140 N.H. at 132, 663 A.2d 1328. Under this standard, there

is a presumption favoring the constitutionality of the regulation, and in determining the validity of a municipal ordinance, its reasonableness will be presumed. *See Piper v. Meredith*, 110 N.H. 291, 298, 266 A.2d 103 (1970). The rationale behind this presumption stems from the principle that enacting ordinances “is a legislative function and judging the wisdom of the legislation is not the function of this court.” *Quirk*, 140 N.H. at 129, 663 A.2d 1328 (quotations, citations, ellipses and brackets omitted). We have explained that we “will not second-guess the town’s choice of means to accomplish its legitimate goals, so long as the means chosen is rationally related to those goals.” *Caspersen*, 139 N.H. at 644, 661 A.2d 759. With regard to zoning ordinances, we have noted that towns need to have discretion in passing ordinances because “[i]n another town, on an identical fact pattern, a different decision might lawfully be reached by another [zoning board]. This does *126 not mean that either finding or decision is wrong *per se*.” *Nestor v. Town of Meredith*, 138 N.H. 632, 634, 644 A.2d 548 (1994). Although this case involves a town’s exercise of police **1065 powers, rather than a zoning ordinance, similar considerations apply. The ability of a town to regulate must be flexible, both to protect the public against new dangers and to accommodate new methods of dealing with existing problems. *See* 15 P. Loughlin, *New Hampshire Practice, Land Use Planning and Zoning* § 5.14, at 84–85 (2000). Were we to apply the fair and substantial relationship test to all substantive due process challenges relating to property rights, it would be necessary for us to sit as a “super” town meeting or land use board. We refuse to do so.

[7] [8] [9] Although an ordinance may be *facially* valid because it promotes the public health, safety and the general welfare, this does not end the matter. In order to respect the property owner’s rights, it is also necessary to determine whether the ordinance is “nevertheless arbitrary and unreasonable *as applied* to the plaintiff’s land.” *Metzger v. Town of Brentwood*, 117 N.H. 497, 501, 374 A.2d 954 (1977) (emphasis added). “To determine whether an ordinance is arbitrary and unreasonable, the injury or loss to the landowner must be balanced against the gain to the public.” *Buskey v. Town of Hanover*, 133 N.H. 318, 323, 577 A.2d 406 (1990).

In other words, when the restriction as applied to a particular piece of land is unnecessary to accomplish a legitimate public purpose or the

gain to the public is slight but the harm to the citizen and his or her property is great, the exercise of the police power becomes arbitrary and unreasonable and this court will afford relief under the constitution of this state.

Id. (brackets and quotations omitted). Thus, just as a variance acts as a safety valve that “saves the otherwise valid zoning ordinance from death at the hands of property owners with site-specific constitutional claims,” *Grey Rocks Land Trust v. Town of Hebron*, 136 N.H. 239, 246, 614 A.2d 1048 (Horton, J., dissenting), this balancing test provides a safety valve for otherwise reasonable ordinances passed pursuant to a town’s police powers that may be unconstitutional when applied to a property owner with a site-specific constitutional claim.

[10] We must now decide whether the ordinance here is constitutional both *facially* and as applied to the plaintiff’s land. The stated purpose of the race track ordinance is to

protect the public health, safety and welfare, as well as to prevent the degradation of the environment and the quality of *127 life in the Town of Effingham by insuring that provisions are made for traffic, safety, trash removal, control of dust, noise, glare, and further insuring that adequate and appropriate facilities are provided on the property.

The plaintiff asserts that certain provisions contained within the race track ordinance are *facially* invalid because they bear no relationship to the above goals. These provisions are: (1) the requirement that the premises may be inspected at any reasonable time without notice or consent; (2) the requirement that all litter must be cleaned up within twenty-four hours from the end of each racing event; (3) the prohibition on all overnight camping; (4) the requirement that applicants for a race track permit post a cash bond in the minimum amount of \$50,000; (5) the requirement that the applicant maintain liability insurance and indemnify the town from all liability; (6) the requirement that vehicles be equipped with a muffler that reduces noise to a certain decibel level; and (7) the ban of the accumulation of junk upon the property.

The superior court did not review each of these provisions individually, but rather explained that “[h]aving reviewed the provisions ****1066** of the ordinance, the Court finds and rules that the ordinance is rationally related to the defendant's legitimate goals and, therefore, does not violate the plaintiff's substantive due process rights.” We agree that it is manifestly reasonable for the race track ordinance to require indemnification of the town and to further regulate litter, overnight camping, noise, and the accumulation of junk on the property. As the plaintiff has failed to meet his burden in proving that the above regulations are not rationally related to the town's legitimate goals, we conclude that an individual analysis of each of these factors is unnecessary.

[11] It is less clear whether the town's regulations pertaining to inspection of the plaintiff's premises and a \$50,000 cash bond are rationally related to the defendant's legitimate goals. Thus, an individual analysis of these two regulations is warranted. With regard to the requirement that the town may inspect the premises of the race track, the ordinance specifically provides that the town “may enter, with or without notice or consent, the premises of any racetrack which holds or has applied for a license at any reasonable time to inspect and report on the conditions found to ensure that the applicant is in compliance with the provisions of the regulations.” Although the plaintiff asserts that the above requirement is unconstitutional because it permits the town to inspect the premises “at any time” and the scope of the inspection is “undefined,” we disagree. The ordinance specifically limits inspections to a reasonable time and is limited to the property subject to the license. Given the large crowds and inherent ***128** dangers associated with motor vehicle racing, the town has an interest in ensuring that all necessary safety measures have been taken. Thus, a regulation for the purpose of insuring that “the applicant is in compliance with the provisions of the regulations” is reasonably related to the town's legitimate goals. Although the plaintiff contends that such an inspection must be conducted under the authority of a search warrant, we have held that such administrative inspections are permissible in discrete situations. *See Appeal of Morgan*, 144 N.H. 44, 49, 742 A.2d 101 (1999) (recognizing administrative search exception to the requirement of a search warrant). Moreover, this approach is similar to other State statutes governing licensed facilities. *See, e.g., RSA 155-E:10, III* (2002)

(sand and gravel operations); RSA 72:12-a (2001) (water and air pollution facilities); RSA 266:7 (1993) (school buses); RSA 325:17 (1995) (funeral homes); RSA 321-A:2-a (1995) (carnival and amusement rides); RSA 225-A:10 (2000) (passenger tramways).

[12] We next consider whether the requirement that the owner and operator post a cash bond with sufficient securities in a minimum amount of \$50,000 is reasonable. The plaintiff argues that the ordinance is unreasonable because it was not passed for a legitimate reason, but rather as “a guise for establishing an expensive and substantial hurdle to be overcome before a race can be conducted, without any basis of an expectation that expenses in that amount could ever be incurred by the [t]own.” While the town maintains that the amount of the bond is a reasonable estimate of its exposure for fire, ambulance, police services and equipment, the question remains whether requiring a cash bond is reasonable. During the trial, however, there was testimony that the committee only intended a race track operator to provide a bond executed by a surety company. As the ordinance requires a “cash bond with sufficient securities,” we conclude that the ordinance could be interpreted as only requiring a race track operator ****1067** to post a surety bond. As such a requirement is not unreasonable, we conclude that the plaintiff has failed to meet his burden in proving that such a bond is not rationally related to the town's goal of protecting itself from potential liabilities.

[13] We lastly turn to the question whether the race track ordinance, as applied to the plaintiff's land, violates his substantive due process rights. The town contends that the plaintiff has waived this claim because he never challenged the rejection of his application in his pleadings, but only made a facial attack upon the ordinance. We agree. While pleadings are treated liberally, it remains necessary that counsel be able to understand the dispute and the court be able to decide the controversy on its merits. *See Berlinguette v. Stanton*, 120 N.H. 760, 762, 423 A.2d 289 (1980). A review of the plaintiff's amended pleadings reveals that the plaintiff does not contest the ***129** denial of his application under the ordinance, but only makes a facial attack on the ordinance itself. While the pleadings state that the ordinance is “unreasonable and oppressive in its terms and as applied to the [plaintiff's] property,” the plaintiff attacks the application of the ordinance to his property only on the grounds that (1) he had a vested right to construct and operate a race track on his property,

and (2) the ordinance was not adopted in good faith but instead to prohibit him from conducting races on his property. Moreover, the plaintiff's only request for relief was for the superior court to declare that the race track ordinance did not apply and that it could not be enforced against the plaintiff's property. There is no requested relief associated with the actions of the board of selectmen in denying the plaintiff's application. We conclude that the plaintiff did not preserve this issue below and we will therefore not address it.

II. Procedural Due Process

[14] The plaintiff's second argument is that the town meeting's adoption of the ordinance did not comply with procedural due process requirements. As previously noted, the ordinance was drafted by the committee, and adopted by the town's board of selectmen as an interim regulation pursuant to RSA 31:42. This statute provides that the ordinance will only remain in effect until the following annual town meeting. *See* RSA 31:42. The board of selectmen, therefore, included in the warrant for the next annual town meeting an article calling upon the voters: "To see if the Town will vote to adopt a Racetrack Ordinance as written by the Town of Effingham Racetrack Committee." Because the full text of the ordinance was not printed in the annual report, nor was public notice given regarding its availability for inspection, the plaintiff argues that his procedural due process rights were violated because due process requires something greater than mere notice that a particular ordinance will be discussed at the town meeting.

[15] "It is well settled that an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *City of Claremont v. Truell*, 126 N.H. 30, 35, 489 A.2d 581 (1985) (quotations, brackets and ellipses omitted). While the subject matter of all business to be acted upon at the town meeting must be distinctly stated in the warrant, unlike zoning ordinances, nothing requires the town to either print the full text of a race track ordinance in the town warrant or to provide notice as to where the proposed ordinance was on file for public inspection. *Compare* RSA 31:41-a **1068 (2000), RSA 39:2 (2000) and RSA 31:131 (2000) with RSA 675:7 (1996).

*130 In this case, the town specifically stated in the warrant that a vote would be taken on the race track ordinance. While the warrant did not provide notice as to the place where the proposed ordinance was on file for public inspection, due process does not require the town to provide such information. So long as copies of the proposed ordinance are on file for public inspection prior to the town meeting and it is generally understood where these copies can be obtained, the requirements of due process are met. Here, the record shows that copies of the ordinance were made available well in advance of the town meeting and were located at the town hall. As such, we conclude that the superior court did not err in determining that the procedures by which the town notified the residents that the ordinance would be voted upon at the town meeting were sufficient to comply with procedural due process requirements.

III. Vesting

[16] [17] [18] The plaintiff next argues that, based upon the improvements he has already made to the lot, he acquired a vested right to operate a race track on his property. We conclude that this argument is also without merit. "The common law doctrine of vested rights entitles a landowner to complete his project when he has made substantial construction or incurred substantial liabilities in good faith reliance upon the absence of regulations prohibiting the project." *Chasse v. Town of Candia*, 132 N.H. 574, 579, 567 A.2d 999 (1989). The property owner who claims a vested right bears the burden of proving all necessary elements establishing that right. *See Healey v. Town of New Durham*, 140 N.H. 232, 238, 665 A.2d 360 (1995). As to the effect of the plaintiff's expenditures, each case presents a question of fact peculiar to its own set of circumstances, and the ultimate objective is fairness both to the public and to the individual property owners. *See Piper*, 110 N.H. at 300, 266 A.2d 103. We uphold the superior court's findings of fact unless they are unsupported by the evidence. *See Healey*, 140 N.H. at 238, 665 A.2d 360.

The superior court, which had the benefit of a view, found no evidence of substantial construction or expenditures in furtherance of the proposed race track, and thus no vested entitlement to proceed with development of the race track. In its order, the superior court explained:

Having taken a view, however, the Court finds that the plaintiff has not made substantial improvements to

the property. He has not constructed any permanent structure on the site, but has merely placed a small shed on location (still on blocks) to serve as a "ticket distribution complex" should the track become operational.... Aside from the placement of the shed, all the plaintiff has accomplished is clearing trees and moving some *131 earth to indicate the proposed site of the track itself; this does not constitute a substantial investment or inconvenience as he is in the business of moving sand and gravel on a daily basis on another part of the same parcel.

On the record before us, we cannot say the superior court's decision was unreasonable. *See id.* While we disagree that the plaintiff's efforts in clearing trees and moving earth cannot constitute a substantial investment for the sole reason that "he is in the business of moving sand and gravel," we hold that even taking these efforts into consideration the plaintiff has failed to prove that he has established a vested right. *See **1069 Sanderson v. Town of Greenland*, 122 N.H. 1002, 1005–06, 453 A.2d 1285 (1982) (holding that where property owner, before zoning change took effect, had prepared subdivision for construction by clearing it, building a rough road, and by digging drainage ditches, the site improvements were of a preliminary nature involving only preparatory work and no vested right was established). When compared to the total expenditure which would be required to complete the proposed race track, the plaintiff's investment thus far is insubstantial. *See* 4 Ziegler, *supra* § 70.22, at 70–51 to 70–56. Moreover, the superior court noted that there was testimony at the trial indicating that the plaintiff had not even begun clearing trees and moving earth until after the adoption of the ordinance. In light of the above, we conclude that the superior court did not err in determining that the plaintiff did not acquire a vested right to operate a race track on his property.

IV. Bad Faith

[19] The plaintiff's fourth argument is that the superior court improperly excluded evidence relating to the plaintiff's claim that the ordinance was adopted in bad faith to prevent him from operating a race track. It is evident from the facts of this case that the race track ordinance was enacted in direct response to the plaintiff's race track proposal. The trial court, however, ruled that all evidence regarding the committee members' motivation in proposing the race track ordinance and the

board of selectmen's motivation in deciding to place the proposed ordinance on the warrant was irrelevant and thus inadmissible. We agree. The ordinance at issue was enacted by the voters at the town meeting. Because the decision to enact the ordinance ultimately rested with the voters, any bad faith on the part of the committee or the board of selectmen is irrelevant and was properly excluded by the superior court. *Cf. Kennedy v. Town of Sunapee*, 147 N.H. 79, 85, 784 A.2d 685 (2001).

*132 V. Vagueness

[20] The plaintiff's fifth argument is that the race track ordinance is void because it does not apprise an applicant of the standards that the selectmen are to use when reviewing an application for a race track permit. He argues, more specifically, that the ordinance is not sufficiently clear to prevent arbitrary and discriminatory enforcement. In support of his argument, the plaintiff points to the ordinance's requirement that applicants for a race track permit provide an adequate narrative statement and plans of how the requirements of the ordinance shall be complied with, including the number of security officers to be on site, traffic control measures, monitoring wells, drainage facilities, lighting, noise control measures, access and egress, emergency services, off-street parking, and lavatory facilities. The plaintiff argues that this portion of the race track ordinance is void for vagueness because "[t]here are no specific requirements setting out how much of any of these items might be necessary."

In determining that the ordinance is not unnecessarily vague, the trial court explained:

Those phrases the plaintiff cites as vague are in fact intentionally and necessarily flexible to enable the effective regulation of all types of race tracks. As there are endless variations in the type of race track property owners may wish to operate, the ordinance must provide the Board of Selectmen the flexibility to respond to each applicant's objectives.

We agree. Although the plaintiff complains that the ordinance does not provide specific standards explaining what the **1070 town might consider adequate, we hold that this lack of guidance does not render the

ordinance unnecessarily vague. The race track ordinance was enacted to deal with a variety of races that could vary as to the types of vehicles being raced and the size of the events. Depending upon the foregoing, the specific requirements for each race track would differ.

[21] “A law is not necessarily vague because it does not precisely apprise an applicant of the standards by which an administrative board will make its decision.” *Webster v. Town of Candia*, 146 N.H. 430, 435, 778 A.2d 402 (2001) (quotations and brackets omitted). While the ordinance does not specify the exact standards required by the selectmen in assessing a request for a race track permit, we conclude that it is implied that the selectmen will exercise their discretion consistent with the purpose of the race track ordinance. See *id.* at 435, 778 A.2d 402. As previously discussed, the purpose of the race track ordinance is to protect the public health, safety and welfare, as well as to *133 prevent the degradation of the environment and the quality of life in the town by insuring that provisions are made for traffic, safety, trash removal, control of dust, noise, glare, and further insuring that adequate and appropriate facilities are provided on the property. The application for a race track permit, when read as a whole, informs a property owner that any plans to operate a race track must provide sufficient information to enable the board to conclude that appropriate provisions have been made to comply with the above goals. See *Derry Sand & Gravel, Inc. v. Town of Londonderry*, 121 N.H. 501, 505, 431 A.2d 139 (1981).

VI. Attorney's Fees

The plaintiff lastly argues that he is entitled to an award of attorney's fees due to the bad faith of the town in enacting the ordinance and because if he prevails he will have conferred a substantial benefit upon future applicants, citizens and taxpayers of the town by bearing the burden of setting aside the ordinance.

[22] “Where a party is forced to seek judicial assistance to secure a clearly defined right, a court may award attorney's fees to the prevailing party if bad faith on the part of the losing party is established.” *Taber v. Town of Westmoreland*, 140 N.H. 613, 616, 670 A.2d 1034 (1996). In this case, the plaintiff is not entitled to attorney's fees because he is not the prevailing party.

VII. Other Issues

In light of our decision upholding the race track ordinance, we need not address the plaintiff's remaining arguments because resolution of these issues would have no effect on the outcome of this case. See *Vogel v. Vogel*, 137 N.H. 321, 322, 627 A.2d 595 (1993).

Affirmed.

BROCK, C.J., and DALIANIS, J., concurred.

All Citations

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